

INSURANCE ADVERTISING IN TEXAS

June 2004

MOST ADVERTISING RULES ARE FOUND IN PART I OF TITLE 28, CHAPTER 21, SUBCHAPTER B, OF THE TEXAS ADMINISTRATIVE CODE (TAC). UNLESS OTHERWISE NOTED ALL REFERENCES IN THIS MATERIAL ARE TO THE TAC. FREQUENT REFERENCES ARE ALSO MADE TO THE TEXAS INSURANCE CODE (TIC). NOTE THAT BOTH THE TAC AND TIC MAY BE ACCESSED THROUGH LINKS PROVIDED AT TDI'S WEB SITE, WWW.TDI.STATE.TX.US.

THE MATERIAL PRESENTED IN THESE GUIDELINES IS FOR USE AS A REFERENCE AND IS NOT INTENDED TO REPLACE THE TEXAS INSURANCE CODE OR THE TEXAS ADMINISTRATIVE CODE. ITS USE DOES NOT GUARANTEE THAT A SUBMITTED ADVERTISEMENT WILL BE ACCEPTABLE FOR USE IN TEXAS. THE ADVERTISING UNIT HAS TRIED TO ENSURE THE ACCURACY OF THE INFORMATION PRESENTED IN THIS GUIDE, BUT WE CANNOT TAKE RESPONSIBILITY FOR ANY INACCURACIES, OMISSIONS OR AMBIGUITIES.

THE CONTENTS OF THIS WORKBOOK WILL ALSO BE MADE AVAILABLE AT TDI'S WEB SITE, AT
[HTTP://WWW.TDI.STATE.TX.US/COMPANY/ADVTABLE.HTML](http://WWW.TDI.STATE.TX.US/COMPANY/ADVTABLE.HTML)

TABLE OF CONTENTS

THE ADVERTISING UNIT 5

WHAT IS AN ADVERTISEMENT? 6

WHAT IS NOT AN ADVERTISEMENT? 6

REQUIRED/NON-REQUIRED FILINGS 7

REQUIRED ADVERTISING FILINGS7

NON-REQUIRED ADVERTISING FILINGS7

TYPES OF ADS 7

INSTITUTIONAL7

INVITATION TO INQUIRE8

INVITATION TO CONTRACT8

HOW TO FILE 8

SPEEDING UP YOUR REVIEW 9

OUR REVIEW PROCESS 10

AUTHORITIES 11

TEXAS INSURANCE CODE11

TEXAS ADMINISTRATIVE CODE (TAC)12

REQUIREMENTS FOR COMPANIES 12

ADVERTISING FILE12

SYSTEM OF CONTROL13

STATEMENT OF COMPLIANCE14

REQUIREMENTS FOR AGENTS..... 14

AGENT LICENSING..... 14

LICENSES AND APPOINTMENTS.....14

IDENTIFYING THE LICENSED AGENT/AGENCY.....15

ENDORSEMENTS & OTHER THIRD-PARTY INVOLVEMENT15

 ENDORISING INDIVIDUAL INSURANCE POLICIES15

 STRUCTURING ENDORSEMENT COMPENSATION.....16

 DISCLOSING PAID ENDORSEMENTS16

 ENDORISING GROUP POLICIES17

ADVERTISING IN THIRD PARTY MEDIA17

ADVERTISING GUIDELINES..... 17

GENERAL ADVERTISING GUIDELINES17

 FULL NAME DISCLOSURE19

 NONCONTRACTUAL BENEFITS20

 SOURCE OF STATISTICS21

ACCIDENT & HEALTH (INCLUDING HMO) COVERAGES.....21

 GENERAL A&H GUIDELINES21

 MEDICARE SUPPLEMENTS.....23

 MEDICARE SELECT INSURANCE24

 LONG TERM CARE INSURANCE.....25

 HEALTH MAINTENANCE ORGANIZATIONS (HMOs)26

LIFE AND ANNUITIES.....27

 GENERAL LIFE & ANNUITY GUIDELINES27

 LIFE ILLUSTRATIONS.....28

 EQUITY INDEXED ANNUITIES31

 VARIABLE LIFE AND ANNUITIES32

 LIFE - ACCELERATED BENEFITS32

VIATICAL AND LIFE SETTLEMENTS.....33

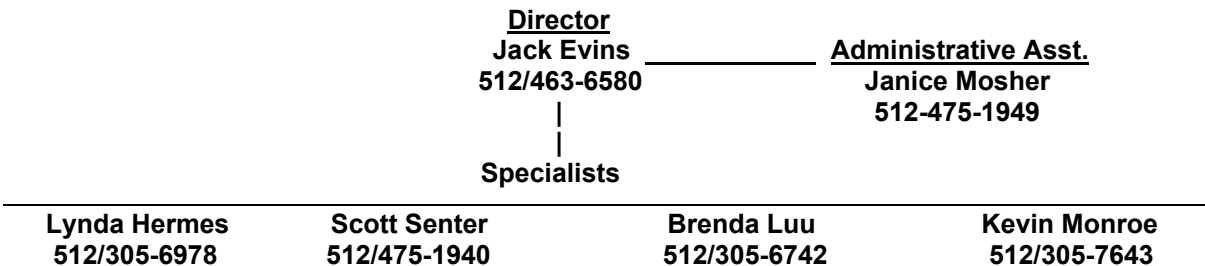
THE ADVERTISING UNIT

The Advertising Unit is part of the Texas Department of Insurance's Consumer Protection Program. Consumer Protection also handles consumer complaints, staffs the 1-800 Information Assistance call center, produces educational and informational publications, and coordinates the Speaker's Bureau which provides Texas Department of Insurance (TDI) expertise to the public and industry.

Senior Associate Commissioner Audrey Selden was named to head the Consumer Protection Program in April 1994. Prior to coming to TDI she was Assistant Secretary of State for the State of Texas.

Jack Evins has been with TDI since 1974 and with the Consumer Protection Program since 1992. He became the Director of the Advertising Unit in August 1999. The Advertising Unit reviewed over 6,000 insurance advertisements this past fiscal year. The Unit's other staff have a combined 43 years of TDI experience, with more than 34 of those years within the Advertising Unit.

Advertising Unit Organizational Chart



Advertising Unit staff can be reached in any of the following ways:

By Phone: 512/475-1949

By Mail: Advertising Unit - MC 111- 2A
The Texas Department of Insurance
PO Box 149091
Austin, TX 78714-9091

By Fax: 512/305-8192

By E-mail: advertising@tdi.state.tx.us

TDI's Web site: www.tdi.state.tx.us

WHAT IS AN ADVERTISEMENT?

§21.102(1)

An insurance advertisement is defined very broadly in §21.102(1)(G) as any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy. Advertisements include but are not limited to:

Printed or published materials	Radio & TV
Newspapers & magazines	Prepared sales talks
Billboards	Web sites/E-mail
Representations by agents	Leaflets
Descriptive literature	Circulars
Sales aids	Flyers
Illustrations	Form letters
Direct mail	Business cards
Videos	Faxes

WHAT IS NOT AN ADVERTISEMENT?

§21.102(2)

The following materials are not considered to be advertising provided they are not used to urge the purchase, increase, modification, or retention of a policy of insurance:

- ∅ materials used by an insurance company within its own organization and not for public distribution;
- ∅ communications with policyholders;
- ∅ a general announcement sent by a group policyholder to members of the eligible group that a policy has been written or arranged; or
- ∅ correspondence between a prospective group policyholder and an insurer in the course of negotiating a group contract.
- ∅ agent recruitment/training materials, i.e., materials used solely for the training, recruitment, and education of an insurer's personnel, and agents.

Statements in such materials that are intended to be used, or that *may* be used, in consumer sales presentations are *not* exempt. We do not assume that *all* agent training material is exempt.

Note: The company may not misrepresent products to its own agents. Art. 21.20, TIC

REQUIRED/NON-REQUIRED FILINGS

REQUIRED ADVERTISING FILINGS

The Advertising Unit has developed Guidelines for required filing advertisements. These Guidelines are included elsewhere in this workbook.

Advertising required to be filed and reviewed 60 days prior to intended use:

Medicare Supplement - §3.3313 (Chapter 3, Subchapter T, TAC), and Art. 3.74, §9(a), TIC

Long Term Care - §3.3838 (Chapter 3, Subchapter Y, TAC)

Advertising required to be filed and reviewed 45 days prior to intended use:

Medicare HMOs - §11.603 (Chapter 11, Subchapter G, TAC)

Effective December 2000, HCFA (now Centers for Medicare and Medicaid Services, or CMS) issued a finding that state DOIs' authority to regulate "Medicare + Choice" (now "Medicare Advantage") advertising was pre-empted by federal authority. **Note:** This preemption does *not* apply to HMOs having "Medicare Cost" contracts.

Advertising required to be filed but that do not require review prior to use:

Viatical and Life Settlement Companies and Brokers - §3.1707 (Chapter 3, Subchapter R, TAC), and Chapter 1111, TIC

This applies to advertising directed at viators or life settlers. It does not apply to material directed to potential investors, which advertising is not subject to our review.

Variable Life - §3.803(4)(A) - Repealed

The rule requiring the filing of variable life advertising prior to its use was repealed effective January 4, 2001, and no longer requires insurance companies to file variable life ads with us for review.

NON-REQUIRED ADVERTISING FILINGS

While advertisements for other products (e.g., life, annuity, property and casualty) are not required to be filed before they are used, they are not exempt from compliance. Even advertising produced by entities subject to more limited regulation (e.g., Lloyds, county mutuals, fraternal) are subject to the Advertising Rules. Art. 21.21, §2(a), TIC

We will consider all materials submitted to us for review.

TYPES OF ADS

The type of ad determines the level of disclosure required.

INSTITUTIONAL

An **Institutional** ad is a general advertisement of a company or agent. It is only intended to promote interest in the concept of insurance or to promote an agent or company, per §21.102(6). A brochure about a company's history, or a company's or insurance group's billboards, or Yellow Pages ads that do not uniquely describe or identify an insurer's specific products are examples.

INVITATION TO INQUIRE

An **Invitation to Inquire** has as its objective the creation of a desire to learn more about a specific product and is limited to a brief description of the loss for which the benefit is payable. §21.113(a) [A&H] & §21.114(1) [LIFE]

Note: The definition of an “invitation to inquire” for A&H insurance was modified in 1997 to allow for the advertising of premium rates for certain A&H benefit plans provided certain requirements are met. (Previously, A&H insurance “invitation to inquire” ads could not refer to rates at all.) This *does not apply* to specified disease, accidental death and dismemberment, disability coverage, or long term care insurance.

INVITATION TO CONTRACT

An **Invitation to Contract** for life insurance is any solicitation where an application or enrollment form is presented. §21.114(2)

An **Invitation to Contract** for accident and health insurance is any ad that includes more than a brief description of benefits, or one which refers to costs but does not include the information required by §21.113(a)(3). Also refer to §21.113(b)

An advertisement that is an “invitation to contract” will require a greater standard of disclosure. In all cases, a situation where a sale can be or is made is an “invitation to contract.” One can generally assume that, if an agent is present, the situation is an “invitation to contract.” Prepared material presented to a consumer in such situations must meet the requirements for “invitation to contract” advertising.

HOW TO FILE

We accept materials by mail, fax or e-mail as long as they meet the requirements of 28 TAC, § 21.120.

Send advertising material directly to the Advertising Unit at:

**Texas Dept. of Insurance
Advertising Unit, Mail Code 111-2A
333 Guadalupe
P.O. Box 149091
Austin, TX 78714-9104**

Your submission should include the advertisements to be reviewed and a transmittal letter. Submissions containing 20 or more pages should be sent through the U.S. Mail.

There are no fees for filing advertising materials.

For each ad:

- ✓ Provide an identifying form number for each advertisement submitted, preferably in the lower left-hand corner. (Please note that we consider each Web page to be a distinct form, and thus, each should be assigned a unique form number.)

In your transmittal letter:

- ✓ Indicate the material’s category. Advertising materials are reviewed as an Invitation to Inquire, an Invitation to Contract, or an Institutional advertisement.
- ✓ Provide a description of the ad and/or how it will be used. For example, whether it is intended for use as a letter, an envelope, a script, a brochure, etc.

- ✓ For “invitation to inquire” and “invitation to contract” advertising, provide the form number(s) of the policy(ies) and any rider(s) advertised and when they were approved for use in Texas.

SPEEDING UP YOUR REVIEW

New Submissions:

You can help us expedite review of your materials by providing everything we need to complete a review.

- Include the name and direct phone and fax numbers for your company’s compliance person. List e-mail addresses, if available.
- Each numbered form is considered a separate advertisement. More than one advertisement can be submitted under a submission letter. We consider this a package and assign one Filing ID number per submission letter.
- ***Review the ad carefully for compliance with Texas’ advertising, licensing and policy requirements. We expect you to make a reasonable effort to assure the advertising is in compliance before sending it to TDI.***
- Do not place separate advertising forms in protective sheets or in binders. This makes them difficult to handle and copy.
- If you are not sure of an issue or if you feel the rules do not provide enough guidance, call or e-mail us to discuss before you submit materials. While we will not rewrite your advertisement for you or act as a compliance consultant, we will answer specific technical questions and help you in any other way we can.
- We do not review advertisements for policies, certificates or riders that are not yet filed and approved. Materials submitted before a policy, certificate, application, outline of coverage or other forms are approved and entered in TDI’s computer system may be rejected.
- Be sure all entities mentioned in an ad and which may appear to be doing the business of insurance are properly licensed. Provide TDI license numbers if possible.

Resubmissions:

You can help us expedite review of your materials by providing everything we need to complete review of your resubmission.

- Refer to the Filing ID number of your previous submission.
- Identify and briefly describe all changes to the form(s) in your transmittal letter, referencing the specific objections presented in our previous objection letter.
- Highlight, underline or otherwise distinguish all changes on the form(s), but DO NOT HAND WRITE the actual changes on the ad.
- Certify whether any other changes not related to our objections were made to the form(s).
- Assign a new or modified form number to the revised ad for ease of identification; for example, adding a date after the current form number, e.g., REV. 6/04 is an acceptable modification.
- Do not submit new material with your resubmission, unless requested by the Advertising Unit.

OUR REVIEW PROCESS

- As they are received, we date stamp and log each piece of advertising in our tracking system, which assigns a Filing ID number to each submission. We do not return reviewed material.
- **Advertisements are generally reviewed in the order they are received.** Specialists are not usually assigned specific companies or files.
- Our processing time, especially for non-required filings, fluctuates depending on the volume we have pending. While we have no control over the number of submissions received, we make every effort to review materials quickly and consistently.
- If there are no problems with your advertisement, we will send you a reply letter, preferably by fax or e-mail.
- If we think your ad has problems that can be easily brought into compliance, we may call to discuss a solution. You can usually fax us a revision (with a new form ID) to complete the review.
- When we note problems, we will notify you by sending you an “objection letter” giving you the reason(s) for objection; we will then close the file. Advertising is often subjective and context is everything. You may call the specialist handling your submission and discuss our objections to seek an agreement on how to correct them.
- We review advertising for content, context, prominence and position of required disclosures, omissions of required information, and violations of statutes, regulations, policy provisions and licensing requirements.
- If an advertisement raises more serious or complex issues, we may request additional information or, if the ad is in circulation, request that you voluntarily discontinue the ad.
- Section 38.001 (formerly Article 1.24), Chapter 38, Texas Insurance Code, requires that licensees provide information or otherwise respond within ten days of receipt of a request from TDI. It is important that you let us know if the information cannot be provided within this timeframe. We will work with you to resolve any matters of concern.
- We also process written complaints concerning advertising materials. We work with the Policy Approval, Licensing and Legal & Compliance sections of TDI, when necessary, to complete review of an ad.
- We consider any change to an advertisement to be a new ad or a revision. If changes in the policy make revision of the ad necessary, indicate those changes. For ads that are required to be filed for our review prior to use, a revised ad must be resubmitted. We will assign a new Filing ID number to your resubmission.
- Any bracketed information will be treated as variable (e.g., agent names, geographic locations, benefits, phone numbers, or information that may change periodically), as long as a change in the bracketed information will not materially change the ad. In your transmittal letter, you must tell us how the information is expected to change. ***However, please note that any variable material (except for phone, address, names) needs to be bracketed and accompanied by a separate explanation page of how this material will vary. Any changes to text, which was not filed as variable material, will need to be refiled for review.***

AUTHORITIES

TEXAS INSURANCE CODE

Chapter 21, Article 21.20. *Misrepresentation of Policies*

No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon.

Chapter 21, Subchapter B, Article 21.21. *Unfair Competition and Unfair Trade Practices*

Under Article 21.21 §4. The following are hereby defined as unfair methods of competition and unfair and deceptive acts or trade practices in the business of insurance:

(1) *Misrepresentations and False Advertising of Policy Contracts.*

Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon, or making any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, or making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any insurer operates, or using any name or title of any policy or class of policies misrepresenting the true nature thereof, or making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender his insurance;

(2) *False Information and Advertising Generally.*

Making, publishing, disseminating, circulating or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading....

Chapter 21, Subchapter A. *Agents and Agents' Licenses*

21.02. *Who are Agents*

21.07. §1(a). *Agent Licenses and Appointments*

21.07. §2. *To Whom a License May Be Issued*

Chapter 101, §101.051(b)(6) (formerly Art. 1.14-1, §2(a)(6)) *Conduct that Constitutes the Business of Insurance*

(Emphasis added)

Directly or indirectly acting as an agent for or otherwise representing or assisting an insurer or other person in:

(A) soliciting, negotiating, procuring or effectuating insurance or a renewal of insurance;

(B) disseminating information relating to coverage or rates;

- (C) forwarding an insurance application;
- (D) delivering an insurance policy or contract;
- (E) inspecting a risk;
- (F) setting a rate;
- (G) investigating or adjusting a claim or loss;
- (H) transacting a matter after the effectuation of a contract; or
- (I) representing or assisting an insurer or other person in any other manner in the transaction of insurance with respect to a subject of insurance resident, located or to be performed in this state.

TEXAS ADMINISTRATIVE CODE (TAC)

(Part I of Title 28)

Chapter 21. Insurance Advertising, and Certain Trade Practices, and Solicitation (see especially Subchapters A and B)

This principal body of rules defines general insurance requirements.

The following TAC subchapters also contain specific requirements regarding advertising.

Chapter 3. Life, Accident and Health Insurance and Annuities

Subchapter I – Variable Life Insurance

Subchapter R – Viatical and Life Settlements

Subchapter T – Minimum Standards for Medicare Supplement Policies
(including Medicare Select)

Subchapter Y – Standards for Long-Term Care Insurance under Individual and Group Policies

REQUIREMENTS FOR COMPANIES

ADVERTISING FILE

§21.116(a)

Special Enforcement Procedures for Rules Governing Advertising and Solicitation of Insurance

Each insurer, domestic and foreign, must maintain an advertising file at its home office or principal (executive) office. Foreign insurers that have established an office in Texas may maintain the file at that location. Each insurer shall notify TDI in the event the location is planned to be changed and immediately when changed. The file is subject to regular and periodic inspection by TDI. All advertisements shall be maintained for a period of not less than three years.

The advertising file must include:

- a specimen of every advertisement disseminated in Texas,
- a notation attached to each advertisement indicating the manner, extent of distribution and form number of any policy advertised in Texas, and
- an indication that TDI has been notified where the advertising file is being maintained and that access will be provided.

SYSTEM OF CONTROL

§21.122

System of Control and Home Office Approval of Advertising Material Naming an Insurer

(b) **Scope.**

This section shall apply to any advertisement for accident and/or health insurance, life insurance, annuities, group hospital services, and HMO policies that are intended for presentation, distribution, or dissemination in this state.

(c) **Duty of agent.**

Before using an advertisement an agent must file the advertisement with the home office of the insurer affected by the advertisement for written approval. An agent is not required to file advertisements received from the insurer.

(d) **Duty of insurers.**

Every insurer marketing policies in this state shall establish and maintain a system of control over the content, form, and method of dissemination of all advertisements concerning its policies. ***A system of control shall include, but is not limited to, requiring the agents, or any other entities who prepare advertisements which name the insurer or advertise its policy, to submit the proposed advertisement to the insurer's home office for written approval of the home office prior to use. Each insurer shall be responsible for advertisements prepared or approved by it or prepared pursuant to its direction. No insurer may avoid responsibility for advertisements by directing or authorizing anyone else to prepare or approve them.***

(e) **Other applicable laws**

Nothing in this section relieves any agent from complying with other applicable laws.

Consider the following when verifying your company's system of advertising control:

- ✓ Do you maintain current copies of the Texas Insurance Code and 28 TAC?
- ✓ ***Do you actually review and approve/disapprove, or only file, the material? Approval or disapproval is required.***
- ✓ Is advertising developed in-house or by an outside firm?
- ✓ How do you control advertising developed by third party marketing entities or your agents?
- ✓ Who has approval authority for advertising? Have you delegated approval authority to anyone other than the home office [violation §21.122(d)]?
- ✓ Review any monetary agreements with third parties that would constitute paid endorsements. Verify that marketing materials disclose any paid endorsements, including administrative expense reimbursements, to comply with §21.107(g).

- ✓ Verify that advertising materials (except for institutional ads) disclose the full licensed name of the insurer, not just a service mark or trade name, when required by §21.104(b).

It is the responsibility of the insurer to assure that all ads that affect the company comply and are not deceptive or misleading:

- ➔ **Ads developed by the company**
- ➔ **Ads developed by appointed agents**
- ➔ **Ads developed by third parties**

STATEMENT OF COMPLIANCE

§21.116 (b)

All insurance companies filing an annual statement with TDI are required to have an officer of the company, whose duty it is to oversee the company's advertising, file a certificate with their annual statement stating that, to the best of their knowledge, company advertising disseminated by the insurer during the preceding year complied or was made to comply with the provisions of Texas insurance laws and rules as respects its Texas advertising and as its Texas advertising relates to its insureds.

Note: We are now requiring companies that maintain Internet websites accessible to consumers to identify the address (URL) of their site's "home page."

REQUIREMENTS FOR AGENTS

The only advertisements for which an agent does not need written company approval prior to use, pursuant to §21.122(c), are:

- those ads developed by the insurer and provided to the agent;
- "generic" ads limited to information like the agent's name, logo, address, and phone number; and,
- ads that consist only of simple statements describing the availability of lines of insurance, references to experience, service and qualifications; but making no reference to specific policies, benefits, costs or insurers.

AGENT LICENSING

LICENSES AND APPOINTMENTS

Only properly licensed agents may advertise or solicit insurance. They must have the proper license for the line of insurance they intend to represent.

Section 101.051(b)(6) (formerly Article 1.14-1, Sec. 2(a)(6)) of the Texas Insurance Code (TIC) defines the business of insurance. It specifically includes the direct or indirect solicitation of insurance as an act in the business of insurance. It is illegal for anyone to act directly or indirectly as an agent for or otherwise represent or aid on behalf of another person or insurer in the solicitation of insurance without proper license.

Art. 21.02, TIC, *Who Are Agents* defines an agent, in part, as anyone who solicits on behalf of any insurance company. Thus, it is improper for any entity that does not hold an insurance license to solicit for an insurance product, an insurance company, or another agent.

To comply with §19.904, no agent shall make any representation, whether written or oral, that such agent is an authorized representative of any insurer unless the agent has been **properly appointed to act as an agent for such insurer**.

IDENTIFYING THE LICENSED AGENT/AGENCY

28TAC Subchapter J, §19.902(a) requires that an agent file a certificate with the Texas Department of Insurance **identifying any assumed names or DBAs** used and all offices from which business is conducted. This is reported on an LDTL form available from our Agent License Division. Call 512/322-3503. It is also available on our web site at www.tdi.state.tx.us.

Agents may advertise under their own licensed name, a filed agency name or DBA, but not under an employer, association, group or other name, if the employer, association, group or other name is not itself licensed.

Please note that a **“shortened” or substitute** agency name (e.g., truncated name or abbreviation) may be used if shown in close conjunction with and immediately following the first occurrence of the agency’s full name and differentiated by parentheses or other devices to indicate that it is to represent the agency thereafter in the advertisement. The advertisement must clearly show and not just imply that the substitute name stands for the full agency licensed name. Otherwise, any shortened/substitute name must be filed with TDI to be used as an assumed name.

ENDORSEMENTS & OTHER THIRD-PARTY INVOLVEMENT

ENDORING INDIVIDUAL INSURANCE POLICIES

We have seen associations and other groups endorsing or recommending individual policies of insurance. The regulatory position on individual policies is very different than on group products. Any solicitation for an individual policy of insurance requires licensing of the party doing the soliciting.

An endorsement may not directly or indirectly imply that the endorsing association, group, institution, or other entity is involved in the offer of insurance. The biggest problem an unlicensed third party faces is in avoiding acts that, even indirectly, are acts of an agent. Under the law, any act of solicitation or effectuation of an insurance policy is an act of an agent.

Remember, an advertisement is defined very broadly in §21.102(1)(G) as any communication directly or indirectly related to a policy and intended to result in the eventual sale or solicitation of a policy.

All insurance advertisements should originate from and be returned to a properly licensed insurance agent or insurer. An unlicensed third-party can only endorse; they cannot become involved in any insurance transactions, or in any direct or indirect solicitation of insurance.

An unlicensed third-party, group or association may:

- Endorse an insurance company, agent or product and provide truthful statements, quotes, and testimonials endorsing the insurance products to the insurance company for use in the company's advertisements, so long as the language does not recommend that organization members purchase the products.
- State the fact that the organization selects and endorses insurance products in brochures, letters and other media promoting the group, so long as insurance is not a primary inducement to join the organization and any "paid endorsements" are so identified and disclosed.

- Provide an insurance company with information about its membership and collect compensation for that information.

An unlicensed third-party, group or association may not:

- ∅ Allow an insurance agent or company to distribute information about an individual insurance policy, insurance agency or insurance company on the letterhead of the organization.
- ∅ Distribute information about an individual insurance policy, or about an agent/agency or company in envelopes of the organization, unless (1) the third party is providing only a distribution service for the insurance advertisement and is not itself soliciting the coverage, and (2) the insurance information is a piece separate from any other information distributed by the third party and clearly indicates its origin to be an insurance agency or company, and not the third party.
- ∅ Recommend that the organization's members purchase specific insurance products.
- ∅ Imply that you must become a member of the organization in order to purchase the policy.
- ∅ Imply that a purchaser of a policy will become a member of a limited group of persons who will or may receive special advantages from the insurance company not provided for in the policy.

STRUCTURING ENDORSEMENT COMPENSATION

In order to avoid being found to have received commissions, which is an act of an agent, we would advise that the manner in which the group or association is paid not be tied to the volume of sales. This can be arranged in variety of ways, but three are suggested for consideration:

1. Per Member - This method of payment would reimburse the organization for the number of names provided to the insurance company. In reality, what the company is buying is access to the membership.
2. Per Use of Endorser's Name - This method of payment would reimburse the organization for the number of mailings where the insurance company used their endorsement. Again, the payment would be tied to the use of the organization's name.
3. Per Year - This method would be a flat fee that could be renegotiated each year. Each year the organization and the insurance company could consider how each has benefited from the arrangement and determine the appropriate value on the endorsement. This could be made payable monthly, if desired.

DISCLOSING PAID ENDORSEMENTS

- If the entity making a testimonial, endorsement, or appraisal, receives administrative fees, cost allowances or any other compensation, directly or indirectly, §21.107 (g) requires that this shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement."
- §21.107(g)(2) requires that this disclosure be conspicuous and made in a clear manner, in close conjunction to the endorsement, and in a type and face size not smaller than the endorser's name.

ENDORISING GROUP POLICIES

- In a group policy, there is a master policy purchased by a valid group. In the capacity of group master policyholder, a group is afforded certain exemptions in the Texas Insurance and Administrative Codes.
- A general announcement by a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged, is not considered advertising, provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage. §21.102(2)(C).

ADVERTISING IN THIRD PARTY MEDIA

Advertising material which appears in media operated by unlicensed third parties (e.g., newspapers, magazines, Web sites) must not give the appearance that the third party is soliciting or otherwise acting or offering to act as an agent. This has been more frequently a problem with unlicensed parties' Web sites containing an insurer's or agent's advertising. The relative position and prominence of the name of unlicensed Web site "host" as opposed to that of the licensee may confuse the reader as to whether the "host" is offering the coverage. Careful attention must be given to which entity's "voice" appears to be soliciting the coverage. Even if the "host" does not appear to be offering the coverage, it may appear to be endorsing the coverage, in which case, the "paid endorsement" requirements discussed above may be relevant.

ADVERTISING GUIDELINES

Note: The material presented in these guidelines is for use as a reference and is not intended to replace the Texas Insurance Code (TIC) or the Texas Administrative Code (TAC). Its use does not guarantee that a submitted advertisement will be acceptable for use in Texas. The Advertising Unit has tried to ensure the accuracy of the information presented in this guide, but we cannot take responsibility for any inaccuracies, omissions or ambiguities.

The following suggested guidelines are offered in addition to the General Guidelines for advertising. Materials will generally be reviewed without comparing the benefits listed in the advertisement to the benefits contained in the policy, riders, certificate, or schedule of benefits. Based on this limited review, the Department will check for compliance with all applicable statutes, rules, and regulations. Except as otherwise noted, all references are to Part I, Title 28 of the Texas Administrative Code (TAC).

GENERAL ADVERTISING GUIDELINES

The following guidelines are applicable to all lines of coverage. Reference generally §§21.103-21.112.

1. Advertisements must be truthful and not misleading either in fact or in implication. §21.103(a)
2. The format and content of an advertisement must be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. §21.103(b)

3. Whether an advertisement has a capacity or tendency to mislead or deceive is determined 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. §21.103(b)
4. All information required to be disclosed must be set out conspicuously and in close conjunction with the statements to which the information relates or with appropriate captions of such prominence that required information is not minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. §21.103(c)
5. Words or phrases may not be used which are misleading or deceptive because their meaning is not clear, or is clear only to persons familiar with insurance terminology. §21.103(d)
6. An advertisement cannot use misleading words or symbols, or come in an envelope that would imply the material is coming from a governmental entity. §21.104(c)
7. An advertisement, other than "institutional" shall explicitly and conspicuously disclose the type of product as it is classified or addressed by statute (e.g., long-term care insurance) and may not contain statements that avoid a clear and unequivocal statement that insurance coverage or an annuity is the subject matter of the solicitation. §21.104(d)&(f)
8. An advertisement that includes an application, and is advertising more than one policy, must clearly disclose the cost and benefit applicable to each separate policy. §21.104(g)
9. The benefits advertised must match the policy benefits. An advertisement must not imply broader benefits than actually exist. §21.105(a)
10. No advertisement may omit information or use words, phrases, statements, references, or illustrations, if the omission or use of such information has the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any loss covered, premium payable, or policy benefit payable. §21.105(c)
11. Benefits provided by a rider to a policy shall not be advertised with greater prominence than the primary policy benefits. §21.105(f)
12. Endorsements or riders available at the request of the insured, but at additional cost, shall be so advertised to disclose the fact of additional cost. An "invitation to contract" advertisement of endorsements or riders, which may be added to the policy advertised for which premiums are quoted for such policy, must disclose the additional premium for the endorsements or riders. If premiums for the policy appear in the advertisement, the premiums for any riders or endorsements must also separately appear. §21.106(c)
13. An "invitation to inquire" advertisement that mentions riders or endorsements available at the request of the insured, but at additional cost, must conspicuously disclose the fact of the additional cost for those riders or endorsements in close conjunction to the mentioning of them. An "invitation to contract" advertisement of endorsements or riders, which may be added to the policy advertised for which premiums are quoted for such policy, must disclose the additional premium for the endorsements or riders. The premium for the optional rider or endorsement must be shown separately from the overall premium. §21.106(c).
14. All "Paid Endorsements" must be prominently disclosed as such in at least the same type size as and in close conjunction to the name of the entity providing the endorsement. §21.107(g)

15. An advertisement may not directly or indirectly unfairly disparage competitors, their policies, services, or business methods, and may not unfairly disparage or minimize competing methods of marketing insurance. §21.110(a)
16. An advertisement may not contain statements that are untrue in fact or that are misleading by implication in respect of another insurer's assets, corporate structure, financial standing, age, or relative position of the insurer in the insurance business. §21.110(b), TAC, and Art. 21.21, §4(3), TIC
17. An advertisement may not directly or indirectly make an unfair or incomplete comparison of policies, benefits, dividends, or rates, or compare non-comparable policies, e.g., whole life vs. term life, major medical vs. indemnity policy, group vs. individual. §21.111(a)

FULL NAME DISCLOSURE

The full name of the insurer is required to be set out conspicuously in each of its advertisements, other than “institutional” ads, including the portion of the advertisement to be returned to the insurer or agent, if any, per §21.104(a) & (b), 21.103(c). This required information cannot be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. The name must be made conspicuous so that a reasonable person will readily notice it. It can be made conspicuous by presenting it in “all capitals” in a size equal to or greater than, or in contrasting type, font, or color, to the text used in the main body of the advertisement. The presentation of the insurer must not be relegated to footnotes or copyright notices.

Please note that a “substitute” company name (e.g., service mark) may be used if shown in close conjunction with and immediately following the first occurrence of the insurer’s full name and differentiated by parentheses or other devices to indicate that it is to represent the insurer thereafter in the advertisement. The advertisement must clearly show and not just infer that the substitute name stands for full licensed company name.

A shortened (truncated) company name may be used, following the first appearance of the full licensed company name, as long as the word(s) comprising the shortened name can not be confused with the shortened name of another licensed insurer. Otherwise, a shortened name can only appear if identified in the manner described for “substitute” names, above.

Full Name on Web Sites

An Internet page, other than “institutional,” must clearly and conspicuously disclose the full name of the insurance company issuing the coverage advertised.

When considering the proximity and prominence of the name disclosure, it must be assumed that the average consumer does not read an entire Web site. Even though the name may be disclosed in a hyperlink page, the repetition of the disclosure is required to ensure the average reader has the opportunity to read it. The appearance of the full name in a banner or sidebar may satisfy this requirement. Alternatively, the use of a hyperlink that leads directly to a page prominently disclosing the insurer’s full name is a reasonable method of making such a disclosure. Such a hyperlink must appear on each page and have a label that displays the important nature of the information and makes the link obvious. Additionally, the link must appear near the relevant information to which it relates. The reader must be able to easily and readily identify that there is a hyperlink that will identify who the insurer is. This requires the conspicuous display of the hyperlink whenever the reader would need to know who the insurer is, e.g., with any product description.

Full Name with Co-Branding Advertisements

When there is more than one entity disclosed in an advertisement, it must be clear who will actually issue the product. This required information cannot be minimized, rendered obscure, or presented in an ambiguous fashion, or intermingled with the context of the advertisement so as to be confusing or misleading. The reader must be able to easily and readily identify the issuing company. The prominence and repetition given to another entity not issuing the product may be confusing to the reader. Additionally, §21.104(h) prohibits an advertisement's having a capacity or tendency, directly or indirectly to mislead or deceive prospective purchasers with respect to an insurer's assets, financial standing, relative position in the insurance business, etc. Therefore, we would expect co-branding advertising to make it clear that the non-issuing entity has no financial responsibility for the product of the issuing company.

Full Name with Television Advertisements

Please note because television is a medium that employs two modes of communication, audio and video, the full name of the insurer will need to be clearly presented in both the audio and video portions.

NONCONTRACTUAL BENEFITS

Advertising material that references noncontractual services and benefits is subject to certain rules and statutes. To comply with §21.113(d)(18), an advertisement may not list goods and services other than those set out in the policy as possible benefits. Further, §21.109(a), prohibits, as an unlawful inducement, an advertisement's stating or implying anything offering or tending to offer a guarantee or contractual right of pecuniary value outside of the express terms of the contract offered. Offering anything of value not specified in the contract as an inducement to purchase the contract constitutes a rebate, defined as an unfair method of competition and an unfair and deceptive act or practice under Arts. 21.01-2, §2A(c) and 21.21, §4(8)(a), TIC.

To be in compliance with these rules and statute, your advertising material must not have the potential to mislead consumers as to the insurance/HMO contractual benefits or otherwise constitute an unlawful inducement or rebate. Therefore, if you choose to reference the program(s) in your advertising, we offer the following guidelines to assure your compliance with the rules and statutes:

- disclose that the program(s) is/are not an insurance/HMO product, nor a part of or guaranteed under any insurance/HMO contract offered.
- disclose that the program(s) can be obtained for the same additional charge (or at no cost, if appropriate) with or without the purchase of insurance/HMO coverage. (This requirement does *not* apply to the offer of prescription drug discount programs in connection with Medicare supplement coverages, pursuant to Art. 3.74, §3B, TIC.)
- disclose that, if the ad quotes rates for any insurance/HMO coverages and there is an additional charge for the program(s), no part of the premiums/rates shown is payment for any part of the program(s).
- disclose, if applicable, that the insurer/HMO named in the ad will not be responsible for providing the noncontractual services and benefits of the program(s).

Any advertising material referring to noncontractual services and benefits that does not appropriately address these clarifications may be found to violate the regulations cited above. However, you may inform covered persons of the availability of the program(s) *after* the coverage is in effect and the "free look" period has expired.

SOURCE OF STATISTICS

The source of statistics must be identified, per §21.108(b). We generally consider statistics more than five (5) years old to be out of date, thereby having the potential to be misleading, unless the insurer certifies that no more recent data is available. Where a source is identified in a footnote, we consider the "close conjunction" requirement of §21.103(c) (see above) to be met only if the footnote appears on the same page or facing page as the information to which it relates.

References to studies or surveys must provide the name and date of the study or survey along with the name of the entity that published it.

The word "recent" should not be used to characterize a source or other development that first appeared more than a year ago.

We have seen instances where Web sites are cited as the source for statistics. Because information provided on a Web site can change or be deleted, it is imperative that the source can be otherwise accessed even if no longer available on the Web site. Expert opinion has stated that the average life span of Web page is 100 days. Therefore, we may object to your using a Web site that is not under your own control as a source for statistics. We recommend you do not provide Web sites, alone, as a source. If you wish to use these Web sites as the sources, then your company must also provide the name of the publication or article to direct the reader on how to locate the sources for those who do not have access to the Internet.

ACCIDENT & HEALTH (INCLUDING HMO) COVERAGES

GENERAL A&H GUIDELINES

Reminder: *In addition to the following, the "General Advertising Guidelines," discussed above, also apply to accident and health advertising.*

1. An ad containing a dollar amount of benefits payable or stating a benefit period must direct the consumer to see her/his agent or write the company for details regarding exclusions, reductions or limitations and the terms under which the policy may be continued in force. §21.113(a)(2)
2. An advertisement must not use the phrase "low cost" or "low cost plan" without providing a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public. §21.113(h)(5)
3. An advertisement may not words such as "all" or "100%" in a misleading way -- their use usually exaggerates the payment of benefits; often deductibles or co-payments must be paid. §21.113(d)(15)
4. An "invitation to inquire" ad (excepting those for specified disease, accidental death and dismemberment, disability, and long-term care insurance), may refer to cost or include rate information without including information about all exclusions and limitations, but *only* if the advertisement includes certain prominent disclaimers. As required under §21.113(a)(3), those disclaimers must clearly indicate that:
 - (A) the rates are illustrative only;
 - (B) a person should not send money to the issuer of the health benefit plan in response to the advertisement;
 - (C) a person cannot obtain coverage under the health benefit plan until the person completes an application for coverage; and
 - (D) benefit exclusions and limitations may apply to the health benefit plan.

In addition, §21.113(a)(4) states: *Any rate mentioned in any advertisement disseminated under paragraph (3) of this subsection shall indicate the age, gender, and geographic location on which the rate is based.*

5. An advertisement must disclose, in prominent type, that the product is a LIMITED BENEFIT, SUPPLEMENTAL, INDEMNITY ONLY, CANCER ONLY, or SPECIFIED DISEASE POLICY, when applicable. §21.113(d)(20)
6. Premiums must be shown and broken down by cost of basic policy and riders. Considerations paid on individual policies, including policy fees, must be referred to as premium, cost, consideration, or purchase payments. §21.106(c) & §21.113(h)(1)
7. An advertisement may not imply that there are advantages that usually apply to group coverage, and/or use words such as certificate or enrollment, when the policy offered is actually an individual policy. (There are some individual policies that have discounted rates for minimum levels of participation; those ads may contain such language.) Neither may an advertisement imply that prospective policyholders would become part of a group or other relationship that does not, in fact, exist. §21.113(k)(1)
8. Any advertisement that is an "invitation to inquire" and specifies dollar amounts of benefits payable and/or the period of time during which the benefit is payable, must include the specified language: "For specific costs and further details of the coverage, including exclusions, any reductions or limitations and the terms under which the policy may be continued in force, see your agent or write to the company," in order to comply with §21.113(a)(2).
9. An advertisement that describes the policy as Guaranteed Renewable must clearly and conspicuously state that the insurer may change premium rates only by class, that the coverage may terminate at certain ages, and that the policy may be cancelled only for non-payment of premiums. §21. 113(g)(2)
10. Use of the word "plan" without identifying the subject as an insurance plan violates §21.113(c)(3). (Refer also to §§21.104(d) and (f). These regulations require that advertisements explicitly and conspicuously disclose that the product concerned is insurance, and prohibit statements that avoid a clear and unequivocal statement that insurance is the subject matter of the solicitation.)
11. An advertisement for life, accident and health, or annuities may not use the existence of the Guaranty Association ("guaranty fund") for the purposes of selling, soliciting or inducing the purchase of coverage. Art. 21.28-D, TIC
12. The form number or numbers of the policy advertised, and of any riders or endorsements and any other forms that directly affect the policy, must be clearly identified in an "invitation to contract" (see p. 8) advertisement. See §21.113(c)(1); also §21.102(c), regarding riders, endorsements, etc.
13. An advertisement that is an "invitation to contract" must disclose the 30-day free examination period provision and the full refund of all premiums paid. §§21.113(g)(5)
14. An advertisement that uses the term "pre-existing condition" must define that term. If the advertisement is an "invitation to contract," it must disclose the extent to which a loss is not covered if traceable to a pre-existing condition. §21.113(f)
15. If the terms of a policy limit any insurance coverage of benefits to a certain age group, or reduce such benefits at a certain age, an "invitation to contract" ad must clearly and conspicuously disclose this fact. Please note if all individuals, regardless of age, can purchase the same dollar amount of benefit, then this disclosure would not be required. §21.113(d)(6)
16. An advertisement that is an "invitation to contract" must include all limitations and exclusions affecting the payment of benefits or costs of a policy. §21.113(d)(1)

17. An "invitation to contract" ad shall disclose any waiting, elimination, probationary or similar period of time between the date of loss and the date benefits begin to accrue for such loss. §21.113(e)(1)

MEDICARE SUPPLEMENTS

Article 3.74, §9(a), TIC, and §3.3313(1), TAC, require that all Medicare supplement advertisements be submitted for review 60 days prior to use.

Reminder: In addition to the following, the "General A&H Guidelines," discussed above, also apply to Medicare supplement advertising.,

1. Advertisements referenced as being "Important Notices" and directed primarily to Medicare recipients or senior citizens are presumed to be misleading or having the capacity or tendency to mislead unless shown otherwise. §21.113(d)(14)
2. When a Medicare related advertisement is used primarily as a source for leads in the solicitation of insurance, it shall prominently state this fact. The advertisement shall state in a prominent place the following or similar words: "This is a commercial message from (insurance company name), a private insurance company which is not an agency of Social Security, Medicare, or any other governmental agency." §21.113(d)(12)
3. A lead card or other cold lead advertisement must disclose in a conspicuous manner that the purpose of the advertisement is to solicit insurance and that contact will be made by an insurance agent or insurance company. §3.3319(c)(3)
4. An advertisement must not state or imply that an obligation is imposed by the receipt of advertising material offering assistance or information concerning Medicare. §21.113(d)(10)
5. The plans offered by an advertisement must be identified as A - J, and must disclose that consumers have the choice of 10 standardized benefit packages, including a basic core benefit package. §21.105(c) and §3.3306(2)&(4) [If a Medicare supplement insurer offers fewer than the 10 plans, one plan must be the PLAN A benefit package.]
6. An advertisement for a policy that pays benefits in conjunction with Medicare must disclose the specific Medicare benefits (Parts A or B) the policy is designed to supplement. §21.113 (d)(11)
7. A Medicare supplement advertisement cannot use the phrases *usual and customary*, *reasonable and customary* or words of similar import in describing standards for the payment of policy benefits. §3.3308(a)(3) and §21.103(a).
8. An advertisement must disclose charge limitations established by Medicare. [Applies only to plans F, G, I and J.] §21.105(b), refer to §3.3306(3)(D) and (E)
9. The material must include a statement that the insured is responsible for non-covered charges. §21.105(c) and §21.112
10. An advertisement cannot describe limitations that are more restrictive than Medicare. §21.105(c) and §3.3305
11. An advertisement that is an "invitation to contract" shall include the following statement: "The benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstated if requested within 90 days of losing Medicaid eligibility." §3.3324(f)
12. An advertisement that is an "invitation to contract" must disclose the fact that no individual can be denied any Medicare supplement policy sold by an issuer if the

application is submitted during the six month period beginning with the first month in which an individual, who is 65 years or older, first enrolls for benefits under Medicare Part B. *Open Enrollment* must be stated and fully defined in the advertisement. Failure to do so violates §21.103(a) and §21.105(c), in addition to §3.3324(a).

13. If an "invitation to contract" advertisement makes reference to *medically necessary emergency care* in a foreign country, the term emergency care must be defined as: care needed immediately because of an illness of sudden and unexpected onset. §3.3306(3)(H) and §21.105(c)
14. If the policy contains a pre-existing provision, an "invitation to contract" advertisement must disclose that creditable coverage may reduce or waive the pre-existing condition limitations during the open enrollment period. §21.105(c), §3.3324(c), and §3.3306(1)(A)(iii). Additionally when the term pre-existing condition is used in an advertisement it must be defined in accurate terms. §21.113(f)

MEDICARE SELECT INSURANCE

Medicare Select coverage is designed to provide benefits at competitive rates through the use of *network* providers and the *network restrictions* that are a part of the Medicare Select operating plan arrangement.

Reminder: In addition to the following, the "General A&H Guidelines," discussed above, also apply to Medicare Select insurance advertising.

1. In all Medicare Select advertising we require that the product be clearly identified as **Medicare Select insurance**. §21.104(d) & (f) and §21.105(c)
2. A disclaimer is required in all Medicare Select advertisements clearly stating the restrictions that apply to the use of network and non-network providers. At minimum the statement should read: "Network Restrictions Apply." §21.105(c)
3. Plan providers must be clearly identified as **Network Providers**. The terms *participating* or *preferred* are not acceptable because they are generally only used for PPOs or HMOs, e.g., "The ABC Insurance Company, Medicare Select Program is endorsed by XYZ Hospital, your **network** hospital." §3.3325(c)(6), and §21.103(a)
4. While the use of the phrase, "lower premiums," would ordinarily be a violation of §21.113(h)(5), we can allow its use in Medicare Select advertisements.
5. In an "invitation to contract," we require a disclosure that *network restrictions* means that **no benefits** or reduced benefits are payable to providers outside the network except for travel, emergencies, or other accommodations stated in the policy contract, if such is the case. §§21.103(a), 21.105(c) and 3.3325(i)(2) & (j)
6. An "invitation to contract" must disclose that the individual has the opportunity to purchase any Medicare supplement policy offered by the insurer. §21.105(c) and §3.3325(n)
7. The advertisements must disclose, "Only certain hospitals are network providers under this policy. Check with your physician to determine if he or she has admitting privileges at the network hospital. If he or she does not, you may be required to use another physician at time of hospitalization or you will be required to pay for all expenses." This statement shall be included in the "invitation to contract" advertisement, as that term is defined in §21.113(b) (relating to Rules Pertaining Specifically to Accident and Health Insurance Advertising and Health Maintenance Organization Advertising). §3.3325(k)(8) & §21.112
8. An "invitation to contract" should clearly state that if an insured moves out of the service area, they will no longer have coverage and will have the opportunity to purchase any Medicare supplement policy with comparable or lesser benefits

offered by the insurer or Medicare supplement/Select plans A, B, C or F from any insurer, within 63 days of termination. §§21.113(d)(1), and 3.3312(b)(2)(B) & (b)(3)(D)

LONG TERM CARE INSURANCE

Section 3.3838 requires that all Long-Term Care insurance advertisements be submitted for review 60-days prior to use.

Reminder: *In addition to the following, the “General A&H Guidelines,” discussed above, also apply to long term care insurance advertising.*

1. An outline of coverage shall be delivered to an applicant at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose. An “invitation to contract” advertising package must include the Outline of Coverage unless all the requirements of an “invitation to contract” ad are met in the advertising material itself. If the company is relying on the Outline of Coverage to provide certain required disclosures, a conspicuous statement must be made on the advertisement directing the readers’ attention to the Outline of Coverage and informing him/her of its purpose. §3.3832(a)
2. An ad that is an “invitation to inquire” may not include any references to cost or include premium amounts. §21.113(a)(3). Please note, Art. 21.20-2, Sec. 1 (b)(2), Texas Insurance Code, specifically excludes long-term care insurance from the provisions of §21.113(a)(3).
3. A lead card or other cold lead advertisement must disclose in a conspicuous manner that the purpose of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. §3.3839(d)(3)
4. Advertisements referenced as being “Important Notices” and directed primarily to Medicare recipients or senior citizens are presumed to be misleading or having the capacity or tendency to mislead unless shown otherwise. §21.113(d)(14)
5. An ad containing representations of an aggregate amount payable must contain a clear and conspicuous disclosure in close conjunction therewith of any maximum daily benefit and maximum time limit. §21.113(d)(7)
6. Advertisements for policies providing benefits for which payment is conditioned upon confinement in a hospital, extended care facility, or at home, may not advertise the amount of benefit payable on a monthly or weekly basis if, in fact, benefits are payable based upon a daily pro rata basis relating to the number of days of such confinement, unless such statements are followed immediately by equally prominent statements of the daily benefit payable. If the policy limits the number of days of coverage provided, such limit must also be disclosed. §21.113(d)(8)
7. An advertisement must define benefit standards such as or similar to “usual and customary” or “reasonable and customary.” §§21.105(c) and 21.112. Also refer to §3.3829(a)(3).
8. An advertisement that describes the policy as Guaranteed Renewable must clearly and conspicuously state that the insurer may change premium rates only by class, that the coverage may terminate at certain ages, and that the policy may be cancelled only for non-payment of premiums. ***For long-term care insurance advertising, if the ad includes language such as, “your rates will never increase due to your health status,” disclosure of the conditions under which rates can increase must be made alongside such statements.*** §21.113(g)(2)

9. The term "level premium" may only be used to describe long-term care coverage that is non-cancellable. The term "noncancellability" may be used only when the policyholder has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to make any change in any provision of the insurance or in the premium rate. Please note phrases such as "guaranteed premium," "premium never changes," "set premium," and the like are considered to imply "level premium" and thus are also in violation. §3.3810(a) and (c)
10. An advertisement must not make statements such as "the policy has no lifetime maximum" or list the maximum benefit as a large sum, if such statements are dependent upon multiple confinements. §§21.4(2) and (3), and 21.103(a)
11. An "invitation to contract" advertisement must clearly disclose that the mandated offer of inflation protection in §3.3820(a) must be rejected before other forms of inflation protection can be offered. Depending on the content and overall appearance of the advertisement, this rule may also be applied to "invitation to inquire advertisements." §3.3820(f) and 21.105(c).
12. An "invitation to contract" advertisement must offer a nonforfeiture benefit. Depending on the content and overall appearance of the advertisement, this rule may also be applied to "invitation to inquire" ads. §3.3844(a) and §21.105(c)
13. An "invitation to contract" advertisement must disclose that if the nonforfeiture offer is rejected a contingent benefit upon lapse will be provided and give a description of the contingent benefit. §3.3844(a) and §21.105(c)
14. An "invitation to contract" ad must disclose whether the policy is intended to be tax-qualified or not. §3.3829(a)(10) and (11).
15. If a policy pays varying amounts of benefits for the same loss occurring under different conditions, or pays benefits only when a loss occurs under certain conditions, an "invitation to contract" ad referencing these benefits must also clearly and conspicuously disclose those different or limited conditions. All "invitation to contract" ads must include standards for eligibility of benefits. §§21.113(d)(2) and 3.3818
16. An "invitation to contract" ad must disclose the 65-day period for late premium payments. §§21.105(c) and 21.112

HEALTH MAINTENANCE ORGANIZATIONS (HMOs)

Medicare Cost HMO Advertising

Advertisements offering Medicare Cost coverage to Medicare beneficiaries are required to be filed and reviewed by TDI 45 days prior to the date of their intended use. §11.603

Reminder: *In addition to the following, the "General A&H Guidelines," discussed above, also apply to Medicare Cost HMO advertising.*

1. Providers may not advertise or otherwise solicit directly or indirectly for an HMO. Sec. 101.052 (formerly Art. 1.14-1) & Art. 21.02, TIC
2. Use of phrases such as: "Unlike traditional/conventional insurance..." violates Art. 20A.14(d), TIC. and §21.110(a). An HMO is not "insurance" and cannot use such terms.
3. The full name of the insurer must be disclosed in the advertisement (i.e., Scott & White's full licensed name is Scott and White Health Plan), as required by §21.104(a). A product name is NOT an acceptable substitute, §21.104(b).
4. An ad must be disclose that the company advertising the product is a Health Maintenance Organization, as required by §21.104(d).

5. Phrases such as no deductible and prepaid are misleading under §21.103(a) when co-payments must be paid in order to receive benefits.
6. Be sure all limitations, exclusions, and reasons for termination are disclosed in “invitation to contract” packages. Service area maps, as well as lists of participating providers should be included.

LIFE AND ANNUITIES

GENERAL LIFE & ANNUITY GUIDELINES

Reminder: In addition to the following, the “General Advertising Guidelines,” discussed above, also apply to life and annuity advertising.

Misrepresentation

Misrepresentations of these products, especially life insurance, have frequently exhibited one or more of the following problems:

1. The policies are represented as something they are not.
2. Life policies are characterized as savings plans, retirement plans, college funding plans, mortgage pre-payment plans, etc.
3. Life and annuity policies/contracts are represented to perform “just like a CD,” or similar language.
4. The emphasis is on tax deferral, interest rates and cash accumulation rather than on providing for loss of income due to a premature death.
5. No attempt is made to determine a need for or an amount of death benefit. Often the amount of premium dictates the face amount.
6. The purchaser is given the impression or led to believe that the advertised interest rate is a *yield* on premiums paid.
7. It is not made clear that the advertised rate is not a promise of future performance.
8. Costs are not disclosed. Front-end charges, surrender charges and penalties, and administrative fees all reduce the amount of cash accumulation.

Disclosures

1. An advertisement for an interest-sensitive policy (e.g., annuity, universal life) may not advertise a current or illustrated rate of interest that is higher than the guaranteed rate of interest without also displaying the guaranteed rate of interest paid by the policy with equal prominence. §21.114(4)(G)
2. The time period during which current interest rates are guaranteed payable must be disclosed. §21.114(4)(H)
3. Advertising for a deferred annuity plan must not present interest rates in a manner that implies that the complete premium will accumulate interest at those rates unless such is the fact. It must clearly disclose any loading, policy fees, charges, or other items that represent expenses to the policyholder. Subchapter K, §3.1007(a)
4. The form number or numbers of the policy advertised, and of any riders or endorsements and any other forms that directly affect the policy, must be clearly identified in an “invitation to contract” advertisement. §21.114(3)(A); see also §21.102(c), regarding riders, endorsements, etc.
5. An “invitation to contract” must include all limitations and exclusions. For life and annuity this includes the waiting period for suicide as well as waiting periods for cash value requests and policy loans. Any other restrictions on, or access to, policy values must be disclosed. §21.114(4)(A)

6. An "invitation to contract" must disclose all costs and expenses such as policy fees, service fees, and administration fees. Administration fees, "front end" loads and surrender charges, if any, must be disclosed fully, either as a percentage of premium, cash value or a dollar amount, whichever is applicable. §21.114(4)(J)

Prohibited Terms

1. The words "savings," "investment," "deposit," "investment plan" and similar terms cannot be used to refer to the premium or to the interest to be credited to the contract in a context or under such circumstances or conditions that have the capacity or tendency to confuse or mislead the proposed purchaser as to the nature and limitations of the product or to any benefits received therefrom. §§21.103(a), 21.114(3)(B), 21.114(3)(C), 21.114(5)(F) & 21.114(5)(G)
2. An advertisement must not use the phrase "low cost" or "low cost plan" without providing a demonstration that a composite of lower production, administrative, and claim cost resulting in a low premium rate to the public. §21.114(5)(E)
3. An advertisement may not imply that there are advantages that usually apply to group coverage, and/or uses words such as certificate or enrollment, when the policy offered is actually an individual policy. (There are some individual policies that have discounted rates for minimum levels of participation; ads for such policies may describe those discounts.) Neither may an advertisement imply that prospective policyholders would become part of a group or other relationship that does not, in fact, exist. §21.114(7) & (9)(A)
4. An advertisement for life, accident and health, or annuities may not use the existence of the Guaranty Association (fund) as an inducement to purchase coverage. Art. 21.28-D, TIC

LIFE ILLUSTRATIONS

1. Illustrations are considered an "invitation to contract."
2. Where "current" interest rates are illustrated, the "guaranteed" rate of the policy must also be illustrated -- and may not be obscured by the "current" rates, 21.114(4)(G). Displaying them with equal prominence will avoid any problem. Thus, if a column of values is shown for current or projected values, then a column must be shown for guaranteed values. See also §21.103(a), 21.112, and 21.105(c)
3. The illustration must disclose the specific periods of time for which interest rates are guaranteed. §21.114(4)(H)

An Introduction to the Basic Requirements for Life Insurance Illustrations

Sections 21.2201-21.2214 govern the use of illustrations in the sale of life insurance. The rules apply to all group and individual life policies and certificates except for variable life, annuities, credit life and life policies with no illustrated death benefits exceeding \$10,000 on any one individual. The following is a brief summary of the basic points of these rules. Please note that this introduction is not an exhaustive review of these rules and should not be relied upon as a substitute for reviewing the rules.

Policies to Be Illustrated §21.2205

Only those policy forms that have been filed with the Life/Health division of TDI as policies that will be marketed with an illustration may be illustrated during the sales process. If a policy form is identified as marketed without an illustration, a company may not use an illustration before the first policy anniversary. If illustrations are used, a basic illustration conforming to the rule must be provided. The rule makes certain exceptions for group policies.

Definitions - §21.2204

The most significant definitions include:

Contract premium - the gross premium required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

Non-guaranteed elements - the premiums, benefits, values, credits or charges under a life insurance policy that are not guaranteed or not determined at issue.

Currently payable scale - a scale of non-guaranteed elements in effect for a policy form as of the illustration date or declared to become effective within 95 days of the illustration date.

Disciplined current scale - a scale of non-guaranteed elements that constitute a limit on an insurance company's currently used illustrations. The scale must be reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Standards of the Actuarial Standards Board may be relied upon for guidance if they are:

- consistent with all provisions of the rule;
- limit a disciplined current scale to reflect only actions that already have been taken or events that already have occurred;
- do not permit a disciplined current scale to include projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
- do not permit assumed expenses to be less than minimum assumed expenses.

Illustrated scale - a scale of non-guaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- the disciplined current scale or
- the currently payable scale.

Illustration - a presentation or depiction used in the solicitation or sale of a life insurance policy that includes non-guaranteed elements of the policy over a period of years and includes but is not limited to:

- a basic illustration, which is one showing both guaranteed and non-guaranteed elements.
- a supplemental illustration furnished in addition to a basic illustration. It must meet basic requirements of the rule and may be presented in a format different from the basic illustration. It may depict only a scale of non-guaranteed elements that is permitted in a basic illustration.
- an in-force illustration, which is one furnished at any time after the policy has been in force for one year or longer.

General Requirements and Prohibitions - §21.2206

- Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium must be shown and clearly labeled as guaranteed.
- An illustration may not base non-guaranteed elements on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements must be clearly labeled as non-guaranteed.
- Any illustration depicting non-guaranteed elements over a period of years must include a conspicuous disclaimer that:
 1. Identifies benefits and values that are not guaranteed.
 2. Identifies the assumptions on which the illustration is based.

3. Discloses that the assumptions for the years shown are likely to change and, in fact, are subject to change by the insurer.
4. States that actual results may be more or less favorable.
5. Either generally identifies the factors that may affect future policy performance, such as death claims, investment earnings and overhead costs, or refers to the narrative that identifies these factors.
7. An acceptable disclaimer might say: "The values shown in the current and mid-point columns are not guaranteed and assume that our current scale for interest credited, cost of insurance and expense charges will remain unchanged for the years shown. This is not likely to occur, and actual results may be more or less favorable. Future credits for interest and deductions for mortality and expenses can vary at the company's discretion, depending upon factors such as death claims, investment earnings and overhead costs."
8. Any illustration that indicates a consumer might use non-guaranteed values to pay premiums or other policy charges must disclose clearly that, depending on actual results, a policy owner might need to continue or resume premium payments to keep a policy in force.
9. Insurers are explicitly prohibited from representing a policy as anything other than life insurance.
10. Illustrations may not depict policy performance as more favorable to the policy owner than that produced by the insurance company's illustrated scale.
11. The interest rate used to determine illustrated non-guaranteed elements cannot exceed the smaller of
 - A. the earned interest rate underlying the disciplined current scale, or
 - B. the interest rate for the currently payable scale.
12. An illustration may not depict a persistency bonus, a specified additional amount or a specified reduction in mortality costs or expenses in a specified policy year (after the first year) unless it:
 - A. Represents an express obligation of the insurance company in the contract or policy, and
 - B. Meets lapse-support and self-supporting tests required by the rules.

"Concept" Illustrations

1. A basic or supplemental illustration or both may depict a "concept," such as "vanishing premium" or an income stream. If the concept is shown in a basic illustration, an extended numeric summary must be used. If not shown in a basic illustration, a concept may be shown in an extended numeric summary appended to the basic or in a supplemental illustration.
2. Supplemental illustrations may depict a concept in one of three ways:
 - A. a single illustration that calculates values based on both the illustrated scale and on an alternative scale contained in the rules;
 - B. a single illustration that calculates values based on the illustrated scale, provided an extended numeric summary is attached that calculates values based on both the illustrated scale and one of the alternative scales; or
 - C. two illustrations, one that calculates values based on the illustrated scale and another that calculates values based on one of the alternative scales.

Standards for Basic Illustrations - §21.2207

1. Basic illustrations (aside from the coverage page) must begin with a narrative summary that includes a brief description of the policy (including a statement that it is a life insurance policy) and a brief description of the premium to be paid. Narrative summaries also must briefly describe policy features, riders or

- options —guaranteed or non-guaranteed— and their potential impact on policy benefits and values. A basic illustration also must include the disclaimer, outlined above, concerning non-guaranteed values and benefits.
2. A basic illustration for an individual life policy must include a "numeric summary" showing premiums, death benefits and values at policy years 5, 10 and 20 and at age 70. The summaries must be presented on three bases:
 - A. policy guarantees,
 - B. insurer's illustrated scale and
 - C. insurer's illustrated scale with non-guaranteed elements reduced as follows:
 - i. Dividends at 50 percent of the dividends contained in the illustrated scale.
 - ii. Non-guaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale.
 - iii. All non-guaranteed charges, including but not limited to term insurance charges, mortality charges and expense charges, at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale.
 3. A certification, signed by both agent and customer, that a copy of the illustration has been provided to the customer must be included on the same page as the numeric summary.
 4. Finally, a basic illustration must provide the following "tabular detail" for policy years 1- 10 and for every fifth policy year thereafter until age 100, policy maturity or final expiration and (except for term insurance beyond the 20th year) for any year in which the premium is to change:
 - A. the premium outlay and mode the applicant plans to pay and the contract premium, as applicable.
 - B. the corresponding guaranteed death benefit, as provided in the policy.
 - C. the corresponding guaranteed value available upon surrender, as provided in the policy.

Standards for Supplemental Illustrations - §21.2208

Insurers may provide supplemental illustrations if:

1. they are attached to, accompanied by or preceded by a basic illustration that complies with the rule;
2. the non-guaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
3. they conform to the General Rules and Prohibitions section of the rule; and
4. the premium underlying the supplemental illustration is equal to the premium shown in the basic illustration.

Sections 21.2209 - 21.2214 set out the requirements and guidelines for delivery of an illustration, the nature of illustrations in annual reports, and the requirements for the insurer to provide an annual certification filing.

EQUITY INDEXED ANNUITIES

***Reminder:* In addition to the following, the "General Life & Annuity Guidelines," discussed above, also apply to equity indexed annuity advertising.**

An equity indexed annuity (EIA) is a fixed, deferred single or flexible premium annuity contract that is generally linked or tied to the performance of the S&P 500 index. Since EIAs are rather complex contracts, our main goal is to have advertisements accurately describe the "pros" and "cons" of the contract, e.g., disclosing the indexing

formula, participation rates, any caps, surrender charges, and the guaranteed elements of the contract. EIA advertisements should not imply that the contract is an investment tied to individual stocks or that it is a variable product.

VARIABLE LIFE AND ANNUITIES

Reminder: *In addition to the following, the “General Life & Annuity Guidelines,” discussed above, also apply to variable life and annuity advertising.*

These must include a prospectus as required by the Securities and Exchange Commission. We do not generally review the prospectus itself. However, required disclosures, if found prominently stated in the prospectus, may suffice to bring an “invitation to contract” package into compliance.

Pursuant to §3.803, an insurer issuing flexible premium variable life contracts shall provide, to all prospective purchasers, an illustration of cash surrender values prior to or at the time of delivery of the contract. Any illustration of cash surrender values delivered to an applicant or prospective applicant pursuant to this subsection shall:

- include a hypothetical gross investment return of 0.0%, and when other hypothetical gross investment returns are included, the current gross investment return must, to the extent permitted by federal law, be included;
- give equal prominence to both guaranteed and nonguaranteed aspects of the contract if guarantees are included in the contract;
- prominently display, by way of written statement, the hypothetical nature of the illustration as it relates to investment returns;
- prominently state that a contract may terminate due to insufficient premiums and/or poor investment performance; and
- prominently show, by way of written statement, that excessive loans or withdrawals may cause the contract to lapse due to insufficient cash surrender value and, at the option of the insurer, prominently display the effects of loans or withdrawals on contract values.

LIFE - ACCELERATED BENEFITS

Reminder: *In addition to the following, the “General Life & Annuity Guidelines,” discussed above, also apply to advertising of life insurance with accelerated benefits.*

“Accelerated benefits” refers to a policy or contract that provides life insurance benefits which may become payable prior to death. Under certain conditions a person with a terminal illness, long-term care illness, or specified disease, can access all or a portion of the death benefit. This money can then be used by the insured or their family as “living benefits.” §3.4302(a); see also TIC §1111.051, et seq.

Rules for the offering of these benefits within a life insurance policy are found in Chapter 3, Subchapter CC, §§3.4301 – 3.4317, *Standards for Acceleration of Life Insurance Benefits*. These benefits can be a part of the policy contract or be added to an existing policy through the filing of an endorsement or rider.

The title of any acceleration-of-life-insurance benefits shall be descriptive of the coverage provided and shall use such terms as “acceleration-of-life-insurance benefit,” “accelerated benefit,” or words of similar import. §3.4312(a)(2)

An “invitation to contract” ad must clearly and concisely disclose the illness, condition, care, or confinement necessary to trigger eligibility for any acceleration-of-life-insurance benefit. §3.4313(a)(1)

An “invitation to contract” ad must clearly and concisely disclose the effect of any acceleration of the life insurance benefit provision on the death benefit and/or other

values available under the life policy. This can be accomplished with a statement substantially as follows: "Death benefits, cash values, and loan values will be reduced if an accelerated benefit is paid." §3.4313(a)(2)

An "invitation to contract" ad shall include tax-related disclosures contained in either subsection (a) or (b) of §3.4316, as appropriate, and the disclosure in subsection (c) of §3.4316, or disclosures substantially similar to these disclosures. §3.4313(a)(3)

It is not permissible to mention, illustrate, or refer to a policy or rider offering acceleration-of-life-insurance benefits as an alternative or substitute for catastrophic major medical health insurance. §3.4313(b)

It is not permissible to advertise benefits offered by a rider with more prominence than the benefits of the underlying policy. §21.105(f)

Note: when an acceleration-of-life-insurance benefit policy provides for payment of long-term care expenses through an extension of benefits rider, all advertising requirements found under the long-term care guidelines must be met.

VIATICAL AND LIFE SETTLEMENTS

Viatical and life settlement agreements are not contracts of insurance. However, they are regulated by TDI.

Each registered viatical or life settlement provider, provider representative, or broker must file with the department's Advertising Unit all advertising or other solicitation materials used to market viatical or life settlements, including materials pertaining to the services they provide in this state, on or before the date the materials are disseminated. The advertisements are filed for informational purposes and may be used without the prior review of the department. §3.1707

Viatical/ life settlement advertisements are defined under §3.1702(a)(1).

All advertisements must clearly disclose that this is a solicitation for a viatical or life settlement. §21.104(d)

All advertisements must include the full name of the registered provider (company) or broker, pursuant to §§3.1703(3) and 21.104(a). Further viatical or life settlement providers, representatives or brokers are subject to §19.902, which requires the registration of any assumed name used in the conduct of viatical or life settlement business.

With each application for a viator or life settlement, the registered provider, provider representative, or broker shall deliver to the viator or life settlor and owner required written disclosures. §3.1708

The company is required to disclose that individuals wishing to sell their policies may have alternatives to viatical or life settlement, such as loans secured by the policy, cash surrender values, or accelerated benefits offered under the policy. The company should provide a copy of the form/document that includes this disclosure and certify that it will always accompany the application; otherwise, the ads must include this required disclosure. §3.1708(b)(2)(A)