

1 Public Protection Cabinet
2 Department of Insurance
3 Division of Health and Life Insurance and Managed Care
4 (Amendment)
5 806 KAR 12:010. Advertising of accident and sickness benefits.

6 RELATES TO: KRS 304.3-240, 304.12-010, 304.12-020, 304.12-060, 304.12-120,
7 304.12-130

8 STATUTORY AUTHORITY: KRS 304.2-110(1)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) authorizes the
10 Commissioner of Insurance to promulgate administrative regulations necessary for or as an aid to
11 the effectuation of any provision of the Kentucky Insurance Code as established in KRS 304.1-
12 010. This administrative regulation clarifies the minimum standards for advertising as
13 established in KRS 304.12-010 and 304.12-020.

14 Section 1. Definitions. (1) "Exception" means:

15 (a) Any provision in a policy in which coverage for a specified hazard is eliminated; or
16 [~~and~~]

17 (b) A statement of risk not assumed under the policy.

18 (2) "Limitation" means any provision that restricts coverage under the policy other than
19 an exception or a reduction.

1 (3) "Reduction" means:

2 (a) Any provision that reduces the amount of the benefit; and

3 (b) A risk of loss is assumed but payment upon the occurrence of the loss is limited to
4 some amount or period less than what would be otherwise payable had the reduction clauses not
5 been used.

6 Section 2. Scope. The provisions of this administrative regulation shall be expressly
7 limited to a life or health insurer issuing any policy as defined in Section 3(2) of this
8 administrative regulation, and shall apply to individual and group accident and sickness
9 insurance advertisements.

10 Section 3 [~~Section 2~~]. (1) An insurance advertisement for the purpose of this
11 administrative regulation shall include:

12 (a) Printed and published material and descriptive literature of an insurer used in
13 newspapers, magazines, radio and TV scripts, and billboards and similar displays;

14 (b) Descriptive literature and sales aids of all kinds issued by an insurer for presentation
15 to members of the public, including circulars, leaflets, booklets, depictions, illustrations, and
16 form letters; and

17 (c) Prepared sales talks, presentations, and material for use by agents and brokers, and
18 representations made by agents and brokers.

19 (2) A policy [~~Policy~~] for the purpose of the advertisement regulations shall include any
20 policy, plan, certificate, contract, agreement, statement of coverage, rider, or endorsement that
21 provides accident or sickness benefits or medical, surgical, or hospital expense benefits, whether

1 on a cash indemnity, reimbursement, or service basis, except if issued in connection with another
2 kind of insurance other than life, and except disability and double indemnity benefits included in
3 life insurance and annuity contracts.

4 (3) Insurer for the purpose of the advertisement regulations shall include any corporation,
5 association, partnership, reciprocal exchange, interinsurer, Lloyds, fraternal benefit society, and
6 any other legal entity engaged in the advertisement of a policy.

7 Section 4 [~~Section 3~~]. This administrative regulation shall apply to agents and brokers to
8 the extent that an agent and broker are responsible for the advertisement of any policy.

9 Section 5 [~~Section 4~~]. (1) Advertisements shall be truthful and not misleading in fact or in
10 implication. Words or phrases, the meaning of which is clear only by implication or by
11 familiarity with insurance terminology, shall not be used.

12 (2) Words, phrases, or illustrations shall not be used in a manner that misleads or has the
13 capacity and tendency to deceive as to the extent of any policy benefit payable, loss covered, or
14 premium payable. An advertisement relating to any policy benefit payable, loss covered, or
15 premium payable shall be sufficiently complete and clear to avoid deception or the capacity and
16 tendency to deceive.

17 (a) The words and phrases "all," "full," "complete," "comprehensive," "up to," "as high
18 as," "this policy will pay your hospital and surgical bills," or "this policy will replace your
19 income," or similar words and phrases shall not be used so as to exaggerate any benefit beyond
20 the terms of the policy, and may be used only in a manner that fairly describes a benefit.

1 (b) A policy covering only one (1) disease or a list of specified diseases shall not be
2 advertised as to imply coverage beyond the terms of the policy. Synonymous terms shall not be
3 used to refer to any disease as to imply broader coverage than is the fact.

4 (c) The benefits of a policy that pays varying amounts for the same loss occurring under
5 different conditions or that pays benefits only if a loss occurs under certain conditions shall not
6 be advertised without disclosing the limited conditions under which the benefits referred to are
7 provided by the policy.

8 (d) Phrases similar to "this policy pays \$1,800 for hospital room and board expenses"
9 shall be incomplete without indicating the maximum daily benefit and the maximum time limit
10 for hospital room and board expenses.

11 (3) If an advertisement refers to any dollar amount, period of time for which any benefit
12 is payable, cost of policy, or specific policy benefit or the loss for which a benefit is payable, it
13 shall also disclose those exceptions, reductions, and limitations affecting the basic provisions of
14 the policy without which the advertisement would have the capacity and tendency to mislead or
15 deceive.

16 (a) If a policy contains a time period between the effective date of the policy and the
17 effective date of coverage under the policy or a time period between the date of coverage under
18 the policy or a time period between the date a loss occurs and the date benefits begin to accrue
19 for the loss, an advertisement shall disclose the existence of the periods.

20 (b) An advertisement shall disclose the extent to which any loss is not covered if the
21 cause of the loss is traceable to a condition existing prior to the effective date of the policy. If a
22 policy does not cover losses traceable to preexisting conditions, the advertisement of the policy

1 shall not state or imply that the applicant's physical condition or medical history will not affect
2 the issuance of the policy or payment of a claim. This shall limit the use of the phrase "no
3 medical examination required" and similar phrases.

4 Section 6 [~~Section 5~~]. An advertisement that refers to renewability, cancelability, or
5 termination of a policy, that refers to a policy benefit, or that states or illustrates time or age in
6 connection with eligibility of applicants or continuation of the policy, shall disclose the
7 provisions relating to renewability, cancelability, and termination and any modification of
8 benefits, losses covered or premiums because of age or for other reasons, in a manner that shall
9 not minimize or render obscure the qualifying conditions.

10 Section 7 [~~Section 6~~]. All information required to be disclosed by this administrative
11 regulation shall be stated conspicuously and in close conjunction with the statements to which
12 the information relates or under appropriate captions of prominence that shall not be minimized,
13 rendered obscure, or presented in an ambiguous fashion or intermingled with the context of the
14 advertisement so as to be confusing or misleading.

15 Section 8 [~~Section 7~~]. Testimonials used in advertisements shall be genuine, represent the
16 current opinion of the author[;] be applicable to the policy advertising, and be accurately
17 reproduced. The insurer, in using a testimonial shall make as its own all of the statements
18 contained in the advertisement, and all the advertisement including the statements shall be
19 subject to all of the provisions of this administrative regulation.

20 Section 9 [~~Section 8~~]. An advertisement relating to the dollar amounts of claims paid, the
21 number of persons insured, or similar statistical information relating to any insurer or policy

1 shall not be used unless it accurately reflects all of the relevant facts. The advertisement shall not
2 imply that statistics are derived from the policy advertised unless that is the fact.

3 Section 10 [~~Section 9~~]. An offer in an advertisement of free inspection of a policy or offer
4 of a premium refund shall not be a cure for misleading or deceptive statements contained in the
5 advertisement.

6 Section 11 [~~Section 10~~]. (1) If a choice of the amount of benefits is referred to, an
7 advertisement shall disclose that the amount of benefits provided depends upon the plan selected,
8 and that the premium will vary in conjunction with the amount of the benefits.

9 (2) If an advertisement refers to various benefits that could be contained in two (2) or
10 more policies, other than group master policies, the advertisement shall disclose that the benefits
11 are provided only through a combination of the policies.

12 Section 12 [~~Section 11~~]. An advertisement shall not directly or indirectly make unfair or
13 incomplete comparisons of policies or benefits, or otherwise falsely disparage competitors,
14 policies, services, or business methods.

15 Section 13 [~~Section 12~~]. (1) An advertisement that is intended to be seen or heard beyond
16 the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond
17 those [~~these~~] limits.

18 (2) Advertisements by direct mail insurers shall indicate that the insurer is licensed in a
19 specified state or states only, or is not licensed in a specified state or states, by use of language
20 similar to "This company is licensed only in State A" or "This company is not licensed in State
21 B."

1 Section 14 [~~Section 13~~]. The identity of the insurer shall be made clear in all of the
2 insurer's advertisements. An advertisement shall not use a trade name, service mark, slogan,
3 symbol, or other device that has the capacity and tendency to mislead or deceive as to the true
4 identity of the insurer.

5 Section 15 [~~Section 14~~]. An advertisement of a particular policy shall not state or imply
6 that prospective policyholders become group or quasi-group members, and as members, enjoy
7 special rates or underwriting privileges, unless that is the fact.

8 Section 16 [~~Section 15~~]. An advertisement shall not state or imply that a particular policy
9 or combination of policies is an introductory, initial, or special offer, and that the applicant shall
10 receive advantages by accepting the offer, unless that is the fact.

11 Section 17 [~~Section 16~~]. (1) An advertisement shall not state or imply that an insurer or a
12 policy has been approved, or that an insurer's financial condition has been examined and found
13 to be satisfactory by a governmental agency, unless that is the fact.

14 (2) An advertisement shall not state or imply that an insurer or a policy has been
15 approved or endorsed by any individual, group of individuals, society, association, or other
16 organization, unless that is the fact.

17 Section 18 [~~Section 17~~]. An advertisement shall not contain untrue statements with
18 respect to the time within which claims are paid, or statements that imply that claim settlements
19 will be liberal or generous beyond the terms of the policy.

20 Section 19 [~~Section 18~~]. An advertisement shall not contain statements that are untrue in
21 fact or by implication misleading with respect to the insurer's assets, corporate structure,
22 financial standing, age, or relative position in the insurance business.

1 Section 20 [~~Section 19~~]. (1) Each insurer shall maintain at its home or principal office a
2 complete file containing every printed, published, or prepared advertisement of individual
3 policies, and typical printed, published, or prepared advertisements of blanket, franchise, and
4 group policies, disseminated in this or any other state whether or not licensed in the other state,
5 with a notation attached to each advertisement that shall indicate the manner and extent of
6 distribution and the form number of any policy advertised. The file shall be subject to regular
7 and periodical inspection by the Department of Insurance. All advertisements shall be
8 maintained by the insurer for a period of not less than three (3) years.

9 (2) A life or health [~~Each~~] insurer required to file an annual statement in accordance with
10 KRS 304.3-240, that issues any policy as described in Section 3(2) of this administrative
11 regulation [~~which is now or which becomes subject to the provisions of this administrative~~
12 ~~regulation~~], shall file with the Department of Insurance, together with its annual statement, a
13 certificate executed by an authorized officer of the insurer stating that to the best of his or her
14 knowledge, information, and belief, the advertisements that were disseminated by the insurer
15 during the preceding statement year complied or were made to comply in all respects with the
16 provisions of KRS Chapter 304.

17 Section 21 [~~Section 20~~]. [~~(1)The~~] ~~provisions of this administrative regulation shall not be~~
18 ~~expressly limited to a particular type of insurance and shall be applied to all insurance on~~
19 ~~subjects of risk located in or to be performed in Kentucky.]~~

20 (1)[~~(2)~~] Any person, firm, corporation, or association who knowingly aids and abets an
21 insurer in the violation of this administrative regulation or the applicable provisions of the
22 Insurance Code shall be subject to the penalties established by KRS Subtitle 304.99.

1 Section 22. Incorporation by Reference. (1) The following material is incorporated by
2 reference:

3 (2) Form 440, “Certificate on Advertising- Accident and Health”, 10/2021 edition.

4 (3) This material may be inspected, copied or obtained, subject to applicable copyright
5 law, at the Department of Insurance, Mayo-Underwood Building, 500 Mero Street, Frankfort,
6 Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available on
7 the department’s Web site at: <https://insurance.ky.gov/ppc/CHAPTER.aspx>