STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of Proposed Rules
Governing Trade Conduct -
Marketing Standards

STATEMENT OF NEED
AND REASONABLENESS

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Minn. Stat. § 72A.19, subd. 2, 72A.20, subd. 12, and 60A.17, subd. 15 grants the Commissioner authority to "adopt rules pursuant to chapter 14 to further implement and administer" the provisions of § 60A.17 and chapter 72A. The cited sections and chapter deal with insurance marketing. To properly enforce these sections there is a need to more specifically set forth what constitutes acceptable and unacceptable practices.

The staff of the Department of Commerce has noted the re-occurrence of a number of similar practices and methods of sales conduct which are believed to be improper. Although many of the persons involved in the marketing of insurance products are diligent in their efforts to properly represent the products they sell, there are occasions in which the method of marketing or other means by which the product is represented are so improper that reasonable rules are necessary to assure that those people to whom the marketing is directed receive accurate and truthful information in regard to the products they are purchasing. Reasonable standards also allow those persons involved in the marketing insurance who are attempting to operate in a reputable manner to have clear standards for use in designing the marketing campaigns and carrying them out.

Definite standards will allow the Department to quickly and certainly stop improper marketing methods and assure that the citizens of the State of Minnesota receive accurate and true information about the products they are purchasing.

It is difficult for someone who is accurately representing his product to compete with someone who is willing to make any representations no matter what the actual fact is. By requiring all parties marketing

insurance products to meet the same standards products will be purchased by persons based upon their actual value rather than upon inaccurate, inflated and untruthful representations as to what the products are.

At present insurance rules exist in the general area of advertising for specific lines of insurance. Certain of the standards adopted in these rules duplicate existing rules but expand them to cover all lines of insurance. The general intent of these rules is to have a comprehensive body of standards applicable to all lines of insurance and based on general principles of truth and forthrightness.

When these rules have been adopted, the existing rules will be repealed.

The rules in question set forth in great detail many of the practices that are prohibited and set standards and principles in regard to other methods and means of marketing.

HISTORY

On September 5, 1983, the Commissioner of Commerce published Notice of Intent to Solicit Outside Information at 8 S.R. 1568 for his consideration in the promulgation of regulations pursuant to chapters 60A and 72A of Minnesota Statutes. After review of the comments solicited, the Commissioner proposed rules governing insurance marketing standards on December 28, 1983 and published the proposed rules in the State Register on January 2, 1984 (8 S.R. 1568-1576).

FACTS ESTABLISHING REASONABLENESS

4 MCAR § 1.9421 Applicability. Proposed rule for 4 MCAR 1.9421 states the intended scope of the rules. Said scope is broadly construed as being any insurance advertisement or representation written or oral occcuring directly or indirectly in the State of Minnesota. The intent is to reach every aspect of insurance marketing.

4 MCAR § 1.9422 Construction. Proposed rule 4 MCAR 1.9422 sets forth the general philosophy and policy of the Department in applying these rules and evaluating conduct that may be within their jurisdiction. This rule looks at the overall capacity of the advertisement to be a means of deception or confusion. The perception of the advertisement or representation by an average person is the basic standard set forth. The Depart-

ment will consider all matters pertaining to the situation in evaluating the advertisement. This rule at subpart C contains a requirement of conspicuous notice for any required statements so as not to allow such required notices to be lost in the body of documents and advertising therefore reducing the impact of the intended disclosure to the public.

Subpart D requires advertising and representations to be clear and complete and without the capacity to mislead or deceive.

4 MCAR § 1.9423 Definitions. This section sets forth the definition of eight (8) terms used in the rules. The definitions are necessary to enable persons affected by the rules to comprehend their full meaning, effect and applicability.

A. The definition of an advertisement is intended to include virtually all materials and methods used in the marketing of insurance products.

B. Agent, agents and agencies for the purpose of these rules are those licensed pursuant to Minn. Stat. § 60A.17 and their designated representatives. Because of the general use of the word "agent or agencies" in a legal context limitation of the affected parties to those licensed under § 60A.17 is necessary for clarification purposes.

C. Exception. The word "exception" is used in many insurance policies and throughout the insurance industry and may from time to time have different meanings. Accordingly, a specific definition noting that "exceptions" is any provision whereby coverage is eliminated was deemed necessary.

D. Insurer. As insurer does not always have the same meaning in each and every statutory scheme or context, it was necessary to include a definition of the same for purposes of these rules. The definition in this instance is a broad definition intended to include all entities engaged in the marketing of insurance policies.

E. Limitation. Limitation required definition for the same reason as exception, that it may have different meanings in different policies in different circumstances and to avoid confusion the specific definition for purposes of the rules was required.

F. Policy. The traditional insurance policy issued in the life insurance industry has over the years come to be only one of many means of setting forth the contractual relationship between an insured and insurer.

In addition, self-insurance entities, pools, prepaid insurance and other plans of insurance have all arisen. So as to be clear that the intent of the rules was to cover all of these different ways of providing insurance, a definition of policy was required which would include all of these terms.

G. Reduction. Reduction required definition for the same reason as exception and limitation, that it may have different meanings in different policies in different circumstances and to avoid confusion the specific definition for purposes of the rules was required.

H. Self-Insurer. Since self-insurer is both a descriptive term and may also have a statutory definition for purposes of clarifying those would come under the scope of these rules, it was necessary to specifically refer to the self-insurers so covered as being those authorized by the statutes cited in the definition.

I. Similar policies. Because of the wide variety of questions that might arise as to what constitutes a similar policy and to preclude the endless disputes that might arise as to whether policies with similar benefits but not similar coverages or other circumstances would be included or not included a definition based upon similarity of benefits was determined to be appropriate.

4 MCAR § 1.9424 Deceptive Words, Phrases or Illustrations. This section incorporates various terms, phrases and representations prohibited in the existing rules and in addition expands on the existing rules both as to the types of insurance covered and the representations prohibited.

A. Generally this rules prohibits omissions which have the affect of misleading or deceiving. It requires accurate and complete disclosures and representations. The practice of providing the policy to the person immediately prior to the consummation of sale or the offer of a refund are not allowable means of curing the improper practices. It is the intent of this rule to prohibit such practices not to provide a means of redress upon their discovery. If the practices never occur, redress is not necessary.

B. Based upon the past experiences of the Minnesota Department of Commerce and other insurance agencies in the nation the use of certain words and phrases which are listed in subpart B have been found to consistently be used in an abusive, deceptive or misleading manner.

Accordingly, subpart B prohibits specifically identified phrases especially when used to exaggerate the benefits so that they appear to be more than is actually available under the terms of the policy.

Subpart C refers to a common marketing device which is used and abused regarding the policy's tax benefits. Because tax benefits of any particular policy or any particular tax situation are dependent upon a number of factors and have greater or lesser significance to each individual, each individual should have an explanation of the applicable tax rules provided to them at the same time the representations are being made so that they know if that tax situation applies to them or if there are any limitations or lessening of benefits peculiar to them.

Subpart D. Benefit Terms. Certain expressions have been used to give the impression that benefits may be payable in excess of actual expenses incurred, in effect a windfall. In truth, no benefits in excess of expenses incurred are payable. Therefore, the use of phrases in such a manner as to create the wrongful implication that they are is prohibited.

Subpart E. Payment Terms. A common selling device is to state that certain benefits or services are free or at little or not additional cost to the purchaser when in fact said benefits or services are actually included in the normal premium charge. Inference is made that something is being received for nothing or beyond what you would receive under another policy when in fact that is not the case. Therefore, unless in truth those benefits are free or without additional cost these words or phrases may not be used.

Subpart F. As indicated in regard to the previous section C pertaining to the tax benefits, it is often a common marketing tool to refer to the tax consequences of certain aspects of a policy. One way is to advise someone that a dividend is tax free thereby implying that by purchasing this policy you are receiving some kind of a tax benefit. The usual implication of this type of promotion is to imply that you are gaining something such as being able to receive something that would normally be taxable but because of the use of this policy make it a nontaxable item. This is not true in almost every case. As throughout the rules, the intent of the prohibition is to require an actual representation of what the situation is.

Subpart G. Dread Disease Policies. Single disease policies often times imply they cover more situations than they actually do. The means of doing this is to refer to disease under many names both scientific and common when in fact there is only one disease involved. Once again the rule requires that the coverage and disease be accurately represented to the purchaser.

Subpart H. Policy Limitation. Many people to whom a policy is advertised do not understand the limitations of the benefits they may receive under that policy. In addition, in many policies those benefits vary as the circumstances vary. Often times only the best situation in regard to what they may collect is represented to a potential purchaser. Those circumstances in which they receive less are either not specified at all or are down-played. This rule requires that if the benefits are represented to the potential purchaser the limitations on said benefits must also be disclosed.

Subpart I. Maximum Benefits. Exaggeration of the benefit of the policy to the potential purchaser is done through various representations which are "true" in that it is possible for someone to collect the benefits as represented. The example used in the rule is the phrase "this policy pays $1800 for hospital room and board expenses". While this may be literally true, the maximum daily benefit and the maximum time limit for hospital room and board expenses may be so low as to make the policy far from desirable. However, the emphasis on the high figure as collectable without further explanation gives an incorrect impression. Once again the intent of the rule is to provide the consumer with all the pertinent information necessary to make an appropriate judgment as to the merits of a policy or particular aspect of a policy.

Subpart J. Aggregate Benefits. The requirement set forth here is very similar to the proceeding one pertaining to maximum benefits and also requires that aggregate amounts not be emphasized without giving equal prominence to the amounts payable per day and any limitations that would affect these aggregate amounts be also disclosed. The consumer would thus know both how much he could possibly get on an aggregate basis and at the same time know how little he could get on a daily basis subject to any other limitations there might be. An informed decision could be made on the basis of the merits of the coverage.

Subpart K. False Statements Regarding Coverage. This rule is fairly self-explanatory in that it prohibits a false statement as to the coverage of the entire family when that is not that case, thereby making the consumer believe they are getting something more than they in fact are. This perception may lead someone to purchase a policy because of a broader coverage they perceive it to have than it in fact does.

Subpart K. Exaggeration of Certain Diseases. One method of selling certain policies has been to play on the fear of an exotic disease or diseases never found in a particular group of people. These particular diseases are prominently used as a criteria for the purchase of the policy by the potential buyer. In fact, for purposes of these diseases the policy would have little, if any, benefit to the buyer. If the policy is purchased for that reason, the purchaser would be getting something that would be worthless to him or which he would rarely, if ever, collect under.

Subpart L. Benefit Examples. Once again it is often times the practice of people promoting a particular policy to take the most generous and extreme payment available under the particular policy and use it as an example when selling the policy. In fact it would be highly unlikely that the average person would collect either that amount or under those circumstances. The likely amount collected or method of collection is not disclosed and the potential purchaser is therefore uninformed as to the actual and probable benefit of a policy to him. Such practices are prohibited by this rule. Any examples used must be shown for common illnesses and injuries so that the potential purchaser has a reasonable basis upon which to make his purchase.

Subpart M. Benefit Clarification. Certain promotions pertaining to hospital room expense benefits set forth a range of benefits in such a manner that it could be perceived or it is the intention that it would be perceived that all of those expense benefits would be available to the policyholder at the time of hospitalization. In fact at the time of purchase of the policy the benefits are set. The fact that the particular policy has specific benefit limits must be disclosed so that the purchaser knows what he is buying.

Subpart N. Benefit Increase at Time of Disability. Certain advertisements have implied that benefits payable under a loss of time policy increase or may increase if the needs of the insured increase. In fact, such benefits are limited by the policy provisions and not according to the needs of the insured. That fact must accurately be stated.

Subpart O. Misleading Payment Claims. It has been the experience of the Department and other agencies in regard to insurance advertising that words similar to those listed in subsection P are used to imply a broader coverage than they actually do. As these particular phrases are capable of abuse, their use must be restricted to situations in which they are in fact the truth. The intent is to provide the consumer with information on the coverage they are actually getting rather than what they appear to be getting.

Subpart Q. Premium Levels. Once again this particular rule speaks for itself and prohibits a false statement that premiums will not be changed. In some advertisements, the implication has been made that they will not when in fact they will.

Subpart R. Deductibles. This particular requirement ties in to some of the previous sections mentioned and requires that when benefits payable and premiums are made a part of the advertising, limitations on that policy, such as the deductible, must also be equally prominent. This prevents a common type of marketing abuse where all of the positive aspects of the policy are represented but not any of the limitations. The consumer does not have all the information they need to make a reasonable judgment as to the value of the policy to them.

Subpart S. Other Insurance. Often the consumer is confused by advertisements which speak about benefits payable in addition to other insurance. There are a wide variety of circumstances in which benefits may or may not be payable in addition to other insurance and the consumer must have clear and accurate information available to them at the time of the purchase to make a determination as to the applicability of this particular benefit to them. The rule states a number of instances and specific language which trigger the applicability of this rule.

Subpart T. Immediate Coverage or Guaranteed Issuance. The use of the phrase "immediate coverage or guaranteed issuance" is often abused. Therefore, the use of the term is prohibited by this rule unless the issuer has set up appropriate procedures to ensure that the policy is actually issued in a reasonable time.

Subpart U. Premium Increases or Premium Reductions. The Department has found that people are induced to purchase a policy based upon the initial premium stated in the advertisement. The renewal premium is often at variance with this initial premium and is usually higher than the initial premium. Also, there are often reductions in the coverage because of age. In both instances, the rule requires that the consumer have this information available to them at the time the policy is being represented to them so they can be aware of all circumstances that would be appropriate for their consideration in purchasing the policy.

Subpart V. Pre-existing Conditions. A common advertising statement is that the policy contains no waiting period. The Department has received a number of complaints about such policies when it turns out that pre-existing conditions may negate this assertion. Therefore, the use of this phrase is prohibited unless any limitations, such as the existence of pre-existing conditions, is also communicated to the consumer in the advertisement.

Subpart W. Age Limits. For the older person faced with ever increasing cost of insurance because of his age the phrase "no age limit applies" is a particularly attractive marketing tool. In many cases, the department has found that where such phrases are used there is in fact different considerations given to the policy based upon the age of the applicant. In some instances, the policy cannot be renewed beyond a certain date or age or the company may have the freedom to nonrenew. Therefore, if any of these limitations are in fact available, the phrase "no age limit" cannot be used except in the case where all limitations are set forth.

Subpart X. Health Provisions. Persons with questionable medical conditions or those that just don't want to be bothered with physical examinations or doctor's reports are often induced to consider a policy or even purchase a policy based upon the representation that no medical doctor's or physical exam or report are required or additionally that no

questions regarding the medical history of the applicant will be asked. The truth has often been that that is not a correct statement because while it may apply to the issuance of the policy, payment of claims may be affected by these circumstances. Therefore, a requirement of a clear statement as to what in fact the situation is is required. In certain instances, there may be a time period during which pre-existing conditions are not covered. That must be disclosed to the consumer so he has all the available information necessary for him to evaluate the policy.

Subpart Y. Limited Accident and Health Policies. Often the advertisement pertaining to policies having a limited scope do not clearly set forth the limitations of coverage in the policy. Accordingly, consumers often find that they purchased a policy which they thought covered a broader range than it actually does when they submit a claim. Accordingly, this rule requires full disclosure as to the limitations of a policy.

Subpart Z. Exceptions, Reductions or Limitations. As has previously been stated in these rules, there are requirements that all exceptions, reductions or limitations be displayed with appropriate prominence so that the consumer may measure them against the benefits being claimed for the policy. One method of avoiding this particular requirement is to represent exceptions, reductions or limitations as having a positive or beneficial aspect rather than as a negative. This rule requires that these exceptions, reductions or limitations be stated in a way so that the consumer has a reasonable interpretation of what they are and the effect on the policy so that they can make an informed decision.

Subpart AA. Misleading Cost Statements. Certain policies have been sold with the representation that they are a low cost policy and that this low cost is due to the fact that no insurance agent will call and no commission will be paid. In fact, this may not be the reason why a policy is a low cost policy. The consumer may have an improper interpretation as to the value of the policy. Once again this rule requires a truthfulness.

Subpart BB. Awards. Devices such as safe drivers and other awards have been used as a marketing tool. They often are misleadingly used, create confusion on the part of the consumer or are used to induce

him to be favorably disposed to purchase a particular policy. Accordingly, since they have little if any connection to the value of the policy the consumer is purchasing, their use is prohibited.

Subpart CC. Applications. Certain policies marketed in the past and some currently being marketed use applications deceptively similar to paper currencies, stocks and bonds and other legal type of documents that have no correlation or connection with the policy at hand. They are merely a marketing device which may confuse and has in fact confused applicants.

Subpart DD. Mandated Benefit. The department is aware of certain insurers and others who market a policy emphasizing certain benefits or policy provisions as a reason to buy that particular policy over others. In fact the items touted are statutorily mandated and all similar policies contain these benefits. As this is misleading to the consumer and is intended to make him believe he is receiving something he would not get from another policy, its use is prohibited by this rule.

Subpart EE. Statements of Coverage. From time to time the department has discovered or it has been brought to their attention that certain advertisements do not state what the insurance coverage is that is being offered. In other instances, it is quite confusing as to what is being offered. Accordingly, this rule merely requires that the consumer know what he is being asked to consider purchasing.

Subpart FF. Medicare Supplement Policies. Medicare supplement policies have been subject to a great deal of abuse and the department and the attorney general's office have been actively involved in preventing those abuses for quite some time. This rule is a result of certain abuses found in the marketing of these policies. In most instances they are being marketed to people who are elderly and in many cases unsophisticated and not highly knowledgeable in matters of insurance or who are motivated by fear of health problems and the accompanying economic dangers that it may create. Accordingly, the rule sets forth very specific items that must be included in a medicare supplement advertisement as opposed to a general advertising requirement. This rule is in addition to other general requirements for advertising. The information required by this rule allow the elderly consumer to make a reasoned evaluation of the benefits of the policy being offered.

Subpart GG. Federal Program Information. A marketing tool used in the past and currently being used in regard to the medicare program as well as certain other similar governmental programs has been to offer information to the consumer in regard to the program. This has been used when medicare benefits change and everyone is quite concerned about what the changes are and their applicability to them. Information is at a premium and people are very prone to respond to any offer of that information. Such offers are then tied into the marketing of a particular insurance product relative to that federal program. In the past, the department has received information regarding the marketing of such programs and the offering of the information in a manner which would lead one to believe that the information that is being provided by the governmental agency administering the program or a government agency involved with the program. It is often the general impression of such informational offerings that the governmental agency is somehow involved. The fact that this is an insurance marketing device and that a particular policy of insurance is being offered is not well disclosed. Accordingly, this rule requires such disclosure as well as a statement of the fact that the offering insurer or agent is not affiliated with the government or that particular federal program. The consumer is thus appraised of the fact that this is a marketing device not a representation by the government as to the merits of this particular insurance program and can make their judgment accordingly.

4 MCAR § 1.9425. Exceptions, Reductions and Limitations. This particular rule applies primarily to health and accident insurance. Positive aspects of a policy are often prominently displayed in an advertisement. Negative aspects such as exceptions, reductions and limitations such as waiting, elimination, probationary periods, pre-existing conditions and the like which affect the overall benefit to the consumer of the policy are often excluded from the advertisement or downplayed. It is a common source of complaint to the department coming usually after the consumer has attempted to collect on the policy, that they were mislead by the advertisement and believed that there were no exceptions, reductions or limitations or that they were less than they in fact turned out to be. This rule requires an even-handed approach in representing both positive and negative aspects of a policy.

Subpart B. Pre-existing conditions are a source of complaint to the department. The effect of pre-existing conditions are often not adequately represented to the consumer and the effect of said pre-existing conditions is not known to them until after they have purchased a policy. This rule merely requires that the applicant be advised as to what the situation actually is.

Subpart C. This is similar in nature to Subpart B in regard to pre-existing conditions and deals in an area that generates the same complaints or is part of many of the same complaints. Representation of the effect of pre-existing conditions is not often clear from the advertising. This rule requires that pre-existing conditions must be defined clearly and that they be stated in negative terms so that the intent and the effect is known to the consumer.

Subpart D. Medical Exam Disclosure. Usually this requirement is lumped with the pre-existing and similar complaints where someone finds after applying for a policy that a medical examination is in fact required. Often time this leads to the applicant having his initial premium tied up by the company while the examination is being conducted and the policy being reviewed. The applicant may then still be denied coverage and it may take him even longer to have his premium returned to him. In the interim, he is often without insurance coverage. Had he been aware of this requirement, he may have made other arrangements for insurance.

4 MCAR § 1.9426. Renewability, Cancellability and Termination. A common source of complaints to the department in regard to the area of renewability, cancellability and termination is the inability of the average person to understand from the advertising exactly what the applicable requirements are in regard to these three items. This rule requires that statements in regard to these particular items must be made in a manner that doesn't have the capacity to or the tendency to mislead, deceive, minimize or render obscure the qualifying condition. Any representations must be made in a manner that the consumer can comprehend and reasonably use in evaluating the policy. Certain exceptions to this particular rule are made for group or blanket policies where the coverage is contingent upon the insured's membership in the group and the continuation of the plan.

4 MCAR § 1.9427. Identity.

Subpart A. Disclosure. The department has in the past received complaints that for varying reasons the identity of the insurer, agents or agencies are not as set forth in an advertisement. This requires the consumer to call or otherwise contact the parties to determine the identities. The consumer may or may not wish to deal with the particular insurer, agent or agency or may want to independently evaluate the product being offered without the necessity of contacting the insurer, agent or agency. It also makes it difficult for a consumer to have the coverage evaluated by his current insurance agent or other person unless he contacts the offering party and secures that information. It is unduly burdensome and has no particular benefit to the consumer.

Subpart B. Names. For a variety of reasons trade names, names of government agencies or programs or other devices are used to obscure the identity of the insurer, agent or agency offering a particular product. Often this is done to give a greater weight of authority to the advertisement then it normally would have had. This rule merely requires truth in the representations as to who is involved and what their capacity is.

Subpart C. Connection with a Government Agency. For a variety of reasons trade names, names of government agencies or programs or other devices are used to imply an association with a government agency. This rule merely requires truth in the representations as to who is involved and what their capacity is.

4 MCAR § 1.9428. Testimony as Endorsements or Accomodations by Third Party.

Subpart A. Persons are often times swayed by public figures and other's recommendations of a particular insurance product, whether or not such persons have any expertise or experience in the insurance industry. Where that representation is secured by compensation this rule requires that the fact that person making the testimonial is compensated must be disclosed. This allows the consumer to give the endorsement its proper and appropriate weight and consideration when evaluating the plan.

Subpart B. Approvals or Endorsements. The approval by certain groups, societies, individuals and other people may be a significant factor in the purchase of a particular policy, especially in the case of proce-

dures, organizations or organizations, societies or associations in which the person is a member. This rule merely requires that the representation not be made unless that is fact and that in addition if organization is one controlled or in some way having a relationship with the insurer, that relationship be disclosed as well. Once again the purpose of this rule is to allow the consumer to have all the information he needs to make an accurate evaluation of the policy and that the information be true and correct.

Subpart C. Authenticity. An endorsement or testimonial may be a significant factor in the purchase of a policy. Accordingly, if such an endorsement is used, it must be genuine; it cannot be outdated, be inaccurate or not applicable to the specific policy being advertised. An endorsement given several years ago in regard to an older or different policy cannot be used.

Subpart D. General Restrictions. In dealing with testimonials, it may be difficult for the parties using them to determine when they may or may not use a testimonial or an endorsement. In addition to the criteria set forth above, this rule sets forth specific instances in which the use of a testimonial is prohibited.

4 MCAR 1.9429. Misrepresentation.

Subpart A. Jurisdictional Licensing. Because advertisements may be made over television and radio and newspapers or other publications which cover areas beyond those in which an insurer is licensed the consumer has no way to know whether or not the insurer is licensed where they reside. The insurer is required, when an advertisement will extend beyond the jurisdiction in which he is licensed, not to imply licensings beyond that limit.

Subpart B. Disclosure. This particular requirement is applicable to direct mail insurers only. Because their solicitations extend beyond the states in which they are licensed and it is often times important to the consumer to know whether or not a company is licensed in their state, an affirmative requirement for advising the consumer as to which state the insurer is licensed in is set forth.

4 MCAR § 1.9430 Approval by Government Agency.

Subpart A. Misleading Advertisement. The average consumer relies upon the state and the federal government to protect him from certain behavior. Accordingly, where it is represented to them that the insurer or its products is some way regulated, reviewed, approved or accredited by any state or federal agency the status of the insurer is enhanced. This rule prohibits said representations except in the case where it is actually the fact.

Subpart B. Licensing as Endorsement Disclaimed. In some instances the fact that an insurer, agent or agency by virtue of the fact that it is licensed by the department of commerce or another agency of the state is deemed to be an endorsement or approval of the company. Since this is not in fact the case, a negative statement to the effect that licensing may not be construed as an endorsement or implied endorsement is required.

Subpart C. Reproduction of Report of Examination Prohibited. Because reports by the department of commerce state that the department does not in any way approve or endorse policies of any kind or nature they cannot be referred to in any advertisement since their only effect would be to confuse or mislead.

4 MCAR § 1.9431. Introductory, Initial or Special Offers in Limited Enrollment Periods. A common marketing device which has been the subject of a number of complaints with the department pertain to special introductory or limited time offers. It often gives the implication that this is a special circumstance that will not occur again, that it is only open for a limited time or generally that there is some benefit to the applicant to make his purchase immediately. In some cases, these representations are in fact true; in many cases they are not and the same offer is made repeatedly. Accordingly, the four subparts of this rule require that the situation be accurately represented to the consumer; that if the application is not for a limited time, it should be so stated; and that if it is, that should also be so stated. That if this same offer has been made or an offer substantially similar to it has been made from time to time in the past, that that be represented as well. The consumer may then determine the likelihood of it being offered again or whether immediate action is required.

Subpart D sets the specific time requirements for repeating limited enrollments. Said offers must be at least six months apart.

4 MCAR § 1.9432. Group, Quasi-Group or Special Class Implications. Group policies are perceived by many people as being a beneficial means of obtaining insurance for a variety of reasons including lower group rates. In many cases, this is in fact true. Therefore, the ability to be part of a group or an obtained group type ratings is an attractive inducement to purchase a particular policy of insurance. The National Association of Insurance Commissioners has expressed a concern over these kind of representations in policies. This rule prohibits making any representation that by obtaining the policy you become a member of a group or a member of a quasi-group or that you have some other particular or unique benefit. These representations can be made only if in fact they are true.

4 MCAR § 1.9433. Identification of Plan or Numbers of Policies. The department continually receives requests from the public for explanatory information in regard to policies and insurance industry terms and phrases. In many instances, the public is confused by what they are told by the sales person but they don't want to speak up and show their ignorance. Often this results in their buying something they truly do not understand. This rule deals with situations where multiple benefit amounts are offered as a choice. The advertisement must accurately represent which plan provides which benefits and the premium cost for that plan. This rule merely requires full disclosure and a truthful statement to the consumer.

Subpart B. Benefits Requiring Combination of Policies. This particular rule requires that a consumer be accurately apprised of the fact that the benefits contained in a particular advertisement can only be obtained through combining more than one policy.

4 MCAR § 1.9434. The use of statistical information is often used in advertisements to impress the consumer. Such statistical information is not prohibited by this requirement, it merely requires that the information be pertinent to the matter at hand and that it accurately reflect all relevant facts including the source of the statistical information. Once again this is merely a requirement for full disclosure and truthful representations to the consumer.

Subpart B. Applicable Statistics. This rule requires that only statistics which are applicable to the policy advertised may be used.

4 MCAR § 1.9435. Inspection of the Policy.

Subpart A. Effect. As was noted earlier in the rules, an offer for free inspection of a policy or premium refund does not cure deceptive or misleading statements. The intent of the rules is to prevent those statements, not to find a way for someone violating these rules to expiate the violation.

Subpart B. Return Disclosure. This requirement merely demands that if there is a right to return the policy and obtain a refund of the premium and that right is subject to a time limitation, that that time limitation be disclosed.

4 MCAR § 1.9436. Disparaging Comparisons and Statements. This rule states a fairness requirement in regard to comparing competing products or unfair marketing methods.

4 MCAR § 1.9437. Statements About an Insurer. This rule merely requires truthful statements and nonmisleading statements with regard to an insurer.

4 MCAR § 1.9438. Since service in regard to claims is an important consideration in purchasing a policy, only truthful statements in regard to the claims practices and settlements of the insurer can be used. Statements must be accurate and represent what may be expected from the terms and conditions of the policy. Unusual or unique circumstances are prohibited from being used as examples if they would be misleading.

4 MCAR § 1.9439. Subpart A. For purposes of maintaining a record of the advertisements used by an insurer, a retention requirement of 3 years is established.

Subpart B. Affidavit With Annual Statement. A requirement of an annual affidavit affirming that all advertisements of the insurer comply with the rules and laws of the State of Minnesota is created.

4 MCAR § 1.9440. A system of control is required to ensure that the rules are carried out. Every insurer, agent or agency is required to maintain a system of control over said advertisements and responsibility for all advertisements is placed upon the insurer whose policy is so advertised and represented.

Subpart B. In regard to the foregoing requirement, the insurer is required to maintain control over all advertisements by requiring that they be submitted to it for prior approval.

4 MCAR § 1.9441. Penalty. Establishes that violations of these rules are subject to the penalties described in Minn. Stat. §§ 60A and 62A.

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AND REASONABLENESS

These rules were promulgated because of the substantial volume of complaints in the area of Unfair Trade Practices and particularly insurance marketing standards.

The Notice of Intent to Solicit Outside Opinions Regarding Proposed Rules Relating to Unfair Trade Practices was published in the September 5, 1983 State Register (8 S.R. 415). The proposed rules were published in the January 2, 1984 State Register (8 S.R. 1568).

After the Notice to Solicit Outside Opinions was published various industry groups, individual companies and other concerned parties contacted the Department in regard to the proposed rules. Certain of these parties indicated their desire to be involved in the development of the rules. Accordingly, once an initial draft of the rules was formulated by the Department it was circulated among the concerned parties. Some of the people and groups involved included the Insurance Federation of Minnesota, State Farm Insurance Companies, Blue Cross - Blue Shield, and the St. Paul Companies. The representatives of these entities provided comments and suggested changes through written comments and at various meetings regarding the rules, which continued until shortly before publication of the rules. Numerous changes were made in the rules as a result of those discussions. The changes, in some cases, adopted the suggestions made. In other instances, changes were made which were intended to address the concerns raised even if the changes were not exactly those suggested.

At the same time these discussions were occurring, a public information program was undertaken to make the rules known to the widest spectrum of persons possible. Press releases were issued which were reported in various newspapers in the State including the Minneapolis Star and Tribune. The news releases were provided to radio and television stations as well.

The same information was also provided to various industry groups who in turn alerted their members as to the rules.

During the same period, Commissioner Hatch met with various industry groups or spoke before them. At these times, he brought the rules to the attention of these groups.

The Department made every effort to give the fact of the promulgation of these rules and their content the broadest possible exposure. The exposure that they did receive far exceeds that received by rules in the normal rulemaking process.

The rules themselves are promulgated primarily for the benefit of those whom the insurance is being sold. Their impact will be largely upon insurance companies that would not be considered small businesses pursuant to Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. While it is possible that some of the entities, particularly individual agents, affected by the rules may come under the aforementioned definition, it was determined that since the intent of the rules was to protect the purchaser, their rights and expectations should not be affected because the party they were dealing with came within the definition of a small business. Upon review it was decided that there was no reasonable basis for setting different standards for small businesses that might be subject to these rules.

No comments were received pursuant to the Notice required by Minn. Laws 1983, ch. 188, codified as Minn. Stat. § 14.115. None of the comments previously received in regard to the rules addressed the question of their impact on small business.