Links to applicable rules and statutes: [**Ins 400 - Submission/Form Rules**](http://www.gencourt.state.nh.us/rules/state_agencies/ins400.html)**;** [**RSA 415-F**](http://www.gencourt.state.nh.us/rsa/html/XXXVII/415-F/415-F-mrg.htm)**;** [**Ins 2603 - Advertisements for Medicare Supplement**](http://www.gencourt.state.nh.us/rules/state_agencies/ins2600.html)

Every issuer of Medicare supplement policies or certificates in this state shall submit a copy of any Medicare supplement insurance advertisement intended for use in New Hampshire for review and approval by the NHID Form Examination Unit. See RSA 415-F:7 and Ins 2603.

I. SUBMISSION REQUIREMENTS – ALL FORMS

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| --- | --- | --- | --- | --- |
|  | RULE/STATUTE REFERENCE | CONFIRM SUBMISSION ADHERES TO THE FOLLOWING REQUIREMENTS | YES | N/A |
| Filing Submission Requirements | Ins 401.14 (c) | Third Party Authorization: Authorization letter is attached to the Supporting Documentation tab if the forms are being submitted on behalf of an insurance company. |  |  |
|  | Ins 401.14 (e) | Certificate of Compliance is signed/dated and attached to the Supporting Documentation tab. |  |  |
|  | Ins 401.14 (f) (1) | The SERFF Filing Description includes a brief description of each form, including any new or unusual features, and a list of forms to which it will be attached. |  |  |
|  | Ins 401.14 (f) (2) | The General Information tab indicates a brief statement indicating the filing status in the state of domicile, including the date approved. |  |  |
|  | Ins 401.14 (f) (3) | The SERFF Filing Description includes a statement indicating if a form is replacing another form, including the name of the form being replaced. |  |  |
|  | Ins 401.14 (f) (4) | (4) If a form is being replaced, a “red-lined” document indicating the differences between the previous and new forms is attached to the Supporting Documentation tab. |  |  |
| Form Submission Requirements | Ins 401.04 (a) | (a) Each form shall contain a form number containing numbers, letters, or both that shall be placed in the lower left corner. The form number may contain the prefix “Form”. If a change is made to the form, the new form shall be submitted with a new form number. |  |  |
|  | Ins 401.14 (p) | All variable language is identified with the use of brackets and a statement of variability is attached to the Supporting Documentation tab. |  |  |
|  | Ins 401.14 (q) | Revised forms are submitted with a distinguishing form number. |  |  |

II. INFORMATIONAL: PURPOSE, SCOPE, GENERAL REQUIREMENTS, AND DEFINITIONS

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| --- | --- | --- |
|  | RULE/STATUTE REFERENCE | CONFIRM SUBMISSION ADHERES TO THE FOLLOWING REQUIREMENTS |
| Purpose | Ins 2603.01 | The purpose of this part is to provide prospective buyers with **clear and unambiguous statements in the advertisement of Medicare supplement insurance**, to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance.  This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which **prevents unfair, deceptive and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public** through the advertising media and material used by insurance producers and companies. |
| Applicability | Ins 2603.02 (a) | EXPANSIVE APPLICABILITY  Rules apply to any ‘advertisement’ of Medicare supplement insurance that the insurer knows or reasonably should know is intended for presentation, distribution or dissemination in this state when the presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker, producer or solicitor. (See Definition of “Advertisement” below) |
| Definition:  Advertisement | Ins 2603.03 (a) (1) | “Advertisement" for the purpose of this part shall include:  a.  Printed and published material, audio visual material and descriptive literature used by or on behalf of an insurer in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards, internet displays and websites, and similar displays;  b.  Descriptive literature and sales aids of all kinds issued by an insurer, agent, producer, broker or solicitor for presentation to members of the insurance-buying public; including, but not limited to, circulars, leaflets, booklets, depictions, illustrations, form letters and lead generating devices of all kinds as defined in this part; and  c. Prepared sales talks, presentations and material for use by agents, brokers, producers and solicitors, whether prepared by the insurer or the agent, broker, producer or solicitor. |
| Definition: Material included | Ins 2603.03 (a) (2) | The definition of "advertisement" includes advertising material included with a policy when the policy is delivered and material used in the solicitation of renewals and reinstatements. |
| Definition: Exclusions from advertising | Ins 2603.03 (a) (3) | The definition of "advertisement" does not include:  a.  Material to be used solely for the training and education of an insurer's employees, agents or brokers;  b.  Material used in-house by insurers;  c.  Communications within an insurer's own organization not intended for dissemination to the public;  d.  Individual communications of a personal nature with current policyholders other than material urging the policyholders to increase or expand coverages;  e.  Correspondence between a prospective group or blanket policyholder and an insurer in the course of negotiating a group or blanket contract;  f.  Court approved material ordered by a court to be disseminated to policyholders; or  g.  A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a contract or program has been written or arranged; provided, the announcement shall clearly indicate that it is preliminary to the issuance of a booklet. |
| Form and Content of Advertisement | Ins 2603.05 | (a) The format and content of a Medicare supplement insurance advertisement shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the commissioner of insurance 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. |
| Interpretive Guidelines 1 - 17 | Ins 2603 APPENDIX | INTERPRETIVE GUIDELINES FOR RULES GOVERNING ADVERTISEMENTS OF MEDICARE SUPPLEMENT INSURANCE: Review Guidelines for additional information and examples of appropriate advertisement content. |

III. TYPE OF ADVERTISEMENT AND LEAD GENERATING DEVICE CERTIFICATION

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| --- | --- | --- | --- | --- |
|  | RULE/STATUTE REFERENCE | CONFIRM THE TYPE OF ADVERTISEMENT AND CERTIFY IF SUBMISSION IS A LEAD GENERATING DEVICE THAT COMPLIES WITH INS 2603 | YES | NO |
| Please indicate the type of advertisement submitted by checking YES to one of the three boxes directly below | | | | |
| Institutional Advertisement | Ins 2603.03 (h) | “Institutional advertisement” means, for purposes of this part, an advertisement having as its sole purpose the promotion of the reader’s, viewer’s, or listener’s interest in the concept of Medicare supplement insurance or the promotion of the insurer as a seller of Medicare supplement insurance. |  |  |
| Invitation to Inquire | Ins 2603.03 (i) | "Invitation to inquire" means, for the purposes of this part, an advertisement having as its objective the creation of a desire to inquire further about Medicare supplement insurance that is limited to a brief description of coverage, and that shall contain a provision in the following or substantially similar form:  **"This policy has [exclusions] [limitations] [reductions of benefits] [terms under which the policy may be continued in force or discontinued].  For costs and complete details of the coverage, call [or write] your insurance agent or the company [whichever is applicable]."** |  |  |
| Invitation to Contract | Ins 2603.03 (j) | "Invitation to contract" means, for the purposes of this part, an advertisement that is neither an institutional advertisement nor an invitation to inquire (must include an application for insurance). |  |  |
| Regardless of the type of advertisement, also certify as to whether the advertisement is a lead generating device | | | | |
| Lead generating Device: Definition | Ins 2603.03 (m) | “Lead generating device” means any communication directed to the public that, regardless of form, content or stated purpose, is intended to result in the compilation or qualification of a list containing names or other personal information to be used to solicit residents of this state for the purchase of Medicare supplement insurance. |  |  |
| Certification |  | Is the submitted advertisement a *lead generating device* intended to produce leads? |  |  |
| Disclosure requirements | Guideline 6-A (1) (19) | If yes, does the advertisement comply with Guideline 6-A (1) (19)?  Guideline 6-A (1) (19): A television, radio, mail, internet, or newspaper advertisement, or lead generating device that is designed to produce leads either by use of a coupon, a request to write or to call the company, or a subsequent advertisement prior to contact **shall include information disclosing that an insurance agency may contact the applicant if such is the fact.** |  |  |
| Method of disclosure |  | If disclosure is required per directly above, does the advertisement comply with *method of disclosure* standards at Ins 2603.04? |  |  |
| Cold lead advertising prohibited | Ins 21-105-AB | The practice of cold lead advertising is prohibited by RSA 417:4 and Ins 1905.22 (b)(3). See Bulletin Ins 21-105-AB for additional information. |  |  |

IV. GENERAL REQUIREMENTS

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| --- | --- | --- | --- | --- |
|  | RULE/STATUTE REFERENCE | CONFIRM SUBMISSION ADHERES TO THE FOLLOWING REQUIREMENTS | YES | N/A |
| Method of Disclosure of Required Information | Ins 2603.04 | All information required to be disclosed by this part shall be:   * Set out conspicuously and in close conjunction with the statements to which the information relates **or** * Under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous manner or fashion or intermingled with the context of the advertisement so as to be confusing or misleading. |  |  |
| Deceptive Words, Phrases or Illustrations Prohibited | Ins 2603.06 (a) | 1. Using words, or omitting information, that have the tendency or effect of misleading or deceiving prospective consumers as to the nature or extent of any policy benefit payable, loss covered or premium payable is **not permissible**. Offering policy for inspection prior to sale or offering a refund of premium does not remedy the use of a misleading statement.  2. Advertisement shall not use words that exaggerate any benefit beyond the terms of the policy. Words such as, “all”, “full”, “complete”, “comprehensive”, “unlimited”, “up to”, “as high as”, “this policy will help fill some of the gaps that Medicare and your present insurance leave out”, “this policy pays all that Medicare doesn’t” are not permissible.  3. If advertisement is also an invitation to join a group, there must be clarity in the presentation that the purchase of insurance is separate and distinct from applying for membership to the group.  4. Words/phrases shall fairly and accurately describe the negative features of the limitations, exceptions and reductions of the policy offered.  5. Direct Response advertisement shall not state/imply that a cost savings exist due to no agent/commissions. |  |  |
| Exceptions, Reductions & | Ins 2603.06 (b) (1) & (2) | Invitation to Contract must disclose exceptions, reductions and limitations affecting the basic provisions of the policy. |  |  |
| Exceptions, Reductions & Limitations | Ins 2603.06 (b) (3) | Advertisement shall not use words, “only”, “just”, “merely”, “minimum”, or similar words to describe the applicability of any exceptions/reductions (i.e. “This policy is subject to the following minimum exceptions and reductions). |  |  |
| Pre-existing Conditions – Invitation to Contract | Ins 2603.06 (c) (1) & (3) | 1. Invitation to Contract: Advertisement must disclose the extent to which any loss is not covered due to a pre-existing condition. Use of the term “pre-existing condition” requires an appropriate definition or description.  \*\*\*  3. Invitation to Contract  Application form must contain a question or statement that reflects the pre-existing condition provisions of the policy immediately preceding the blank space for the applicant’s signature. (See rule for examples.) |  |  |
| Pre-existing Conditions | Ins 2603.06 (c) (2) | 2. If policy limits coverage due to pre-existing condition, the advertisement may not state or imply that the applicant’s physical condition or medical history will not affect the issuance of the policy or payment of a claim. Phrase “no medical examination” is prohibited, however, may explain “automatic issue.” If a medical exam is required, the advertisement shall disclose same. |  |  |
| Disclosures relating to Renewability, Cancellability and Termination – Invitation to Contract | Ins 2603.07 | An advertisement that is an Invitation to Contract shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions. |  |  |
| Testimonials or Endorsements by Third Parties | Ins 2603.08 (a) | Testimonials and endorsements used in advertisements shall be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced.  The insurer, in using a testimonial or endorsement, makes as its own all of the statements contained therein, and the advertisement, including the statement, is subject to all the provisions of this part.  When a testimonial or endorsement is used more than one year after it was originally given, a confirmation shall be obtained. |  |  |
| Use of Statistics | Ins 2603.09 (a)–(c)  Guidelines 9-A, 9-C | Statistic must accurately reflect all of the current and relevant facts.   * Source of statistic must be identified. * Advertisement must identify the policy to which the statistics relate or clearly state that the data do not apply to the policy being advertised. |  |  |
| Disparaging Comparisons and Statements | Ins 2603.10 (a) – (c) | Advertisement may not unfairly/incompletely compare itself to non-comparable policies of other insurers. Advertisement shall not contain statements such as “no red tape” or “here is all you do to receive benefits.” |  |  |
| Identity of Insurer | Ins 2603.12 (a) | The identity of the insurer shall be made clear in all of its advertisements. An advertisement shall not use a trade name, an insurance group designation, the name of a parent company of the insurer, the name of a government agency or program, the name of a department or division of an insurer, the name of an agency, the name of any other organization, a service mark, a slogan, a symbol or any other device which has the capacity and tendency to mislead or deceive as to the identity of the insurer.  If Invitation to Contract – the form number(s) of policy advertised shall be stated in the advertisement. |  |  |
| Identity of Insurer | Ins 2603.12 (b) | No advertisement shall use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristic are so similar to combinations of words, symbols or physical materials used by agencies of the federal government or of this state, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state or federal government. |  |  |
| Identity of Insurer - Use of word “Medicare” | Ins 2603.12 (f) | The word “Medicare” shall not be used in title of plan/policy being advertised, unless it is qualified by language differentiating it from Medicare. |  |  |
| REQUIRED DISCLOSURE – Identity of Insurer | Ins 2603.12 (g) | All advertisements shall include the disclaimer to the effect of “Not connected with or endorsed by the US government of the federal Medicare program.” |  |  |
| Misleading address | Ins 2603.12 (k) | The use of an address to mislead or deceive as to the true identity of the insurer, its location or licensing status is prohibited. |  |  |
| Introductory, Initial or Special Offers | Ins 2603.14 (a) (1) | An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact.  An advertisement shall not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising Medicare supplement insurance. |  |  |
| Special “Enrollment Period” Rules | Ins 2603.14 (a) (2) & (4) | “Enrollment period” complies with all requirements and disclosures. See Ins 2603.14 (a) (2) & (4)  (2) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than 6 months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period.  The advertisement shall indicate the date by which the applicant shall mail the application, which shall be not less than 10 days and not more than 40 days from the date that the enrollment period is advertised for the first time.  This part applies to all advertising media, i.e., mail, newspapers, radio, television, magazines, internet displays, and periodicals, by any one insurer.  It is not applicable to solicitations of employees or members of a particular group or association that otherwise would be eligible under specific provisions of RSA 415.  The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.  (4)  The phrase "a particular insurance product" in (2) of this subsection means an insurance policy that provides substantially different benefits than those contained in any other policy.  Different terms of renewability, an increase or decrease in the dollar amounts of benefits, or an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods. |  |  |
| Implied Specific Number/Fixed time offers must be based in fact | Ins 2603.14 (a) (3) | This part prohibits any statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of a particular policy advertised because of special advantages available in the policy, unless that is the fact. |  |  |
| Initial premium rate | Ins 2603.14 (b) | (b)  An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the initial reduced premium.  When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium shall be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears.  The term "juxtaposition" means side by side or immediately above or below. |  |  |
| Special Awards | Ins 2603.14 (c) | Special awards, such as a "safe driver’s award" shall not be used in connection with advertisements of Medicare supplement insurance. |  |  |
| Statements about an Insurer | Ins 2603.15 | An advertisement shall not contain statements that are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitations of the scope and extent of the recommendation. |  |  |

V. COMMENTS: