

# Key General Principles for Insurance Advertising

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Insurance is a heavily regulated industry and advertising insurance products attracts greater scrutiny than most other financial products. “Advertising,” for the purposes of insurance regulation, is typically defined (or otherwise interpreted by regulators) very broadly.

Below are a set of “best practice” key general principles for all participants in the insurance industry – e.g., whether insurance producers, program managers/managing general agents or carriers. While many of these general principles principally apply to life and health advertising, it is good practice to self-impose these to property and casualty advertising materials as well.

Some types of insurance, such as life insurance and annuity contracts, Medicare supplement and long-term care insurance, are subject to particularly prescriptive controls, in addition to the principles summarized below.

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## Key General Principles for Insurance Advertising

### **Key General Principle 1. Advertisements must clearly be identified as, or otherwise be apparent as being, advertisements.**

Advertisements can appear in many forms but must clearly be identified as, or otherwise be apparent as being, advertisements. On that basis, they can appear in a publication (e.g., a website) of a company that is not licensed even if it leads the consumer to, or is linked to, a website where insurance solicitation takes place – provided that the advertisement or publication does not include recommendations, endorsements or promotions from the unlicensed website owner regarding the insurance products or services. For example, a webpage that contains a link with the phrase “Interested in insurance?” that electronically transports the user to an insurance carrier or producer’s webpage is permissible advertising as long as the link is readily identifiable as being an advertisement by the producer or carrier.

### **Key General Principle 2. Advertisements must be truthful and not misleading in fact or in implication.**

All advertisements, including those online, are subject to unfair or deceptive trade practice laws, which prohibit dissemination of misleading or deceptive information to the public. Advertisements cannot include words or phrases which are misleading or whose meanings are clear only by implication or by the consumer’s familiarity with insurance terminology. In particular, state regulators will assess 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, taking into account the target audience’s level of education, race, and primary language. Even if all of the information in an advertisement is true, the advertisement may still be deemed misleading or deceptive if it omits any information needed to present a “complete picture.” Similarly, states restrict advertisements (across all lines) from directly or indirectly making unfair or incomplete comparisons of policies or benefits or otherwise falsely or unfairly disparaging, discrediting, or criticizing competitors, their policies, services, or business methods or competing marketing methods. The fact that an insurance policy offered is made available to a prospective insured for review before consummation of the sale or that an offer is made to refund the premium if the purchaser is not satisfied does not remedy misleading statements.

### **Key General Principle 3. Advertisements must be clear as to who is “speaking,” where the speaker is licensed and where products are available.**

Certain states require insurance advertisements to specify: (i) the full name and address of the insurer and (if advertising online) the producer whose products are being offered; (ii) the relevant insurer’s state of domicile and its principal place of business; and (iii) the insurer and/or producer’s license number. Additionally, an advertisement that will be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed should not imply licensing beyond those limits and should therefore make clear those jurisdictions where a license is not held or any features of a product not available in a particular jurisdiction. This type of information should be set out fairly conspicuously and in close conjunction with the

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statements to which the information relates without being minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the advertisement.

### **Key General Principle 4. No unlawful inducements.**

An advertisement should not state or imply anything offering or tending to offer a good, service, or other guarantee or contractual right of pecuniary value outside of the express terms of the policy offered by the advertisement.

### **Key General Principle 5. All claims must be clearly defined and supported by evidence.**

Any claim in an advertisement must be supported by evidence and clearly defined by way of a disclaimer, which may be added by way of a footnote. All statistics, including those relating to price and cost savings, that are used in an advertisement must be accurate and reflect current and relevant facts (e.g., an advertisement may not use outdated statistics because they appear more favorable to the company). Moreover, an advertisement may not make imbalanced comparisons or disparage competitors or their policies. For instance, an insurer's advertisement cannot be deceptive when advertising a policy by comparison to a competitor's policy where the competitor's terms are substantially different.

### **Key General Principle 6. Any endorsements by third parties must be genuine.**

Generally, testimonials and endorsements used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced, with any financial interests of the author (including payment of compensation) prominently disclosed. A person advertising insurance must also be cautious when including testimonials, appraisals, and analyses in its advertisements. When used, they must represent the opinion of the company/person being credited and relate to the specific policy being advertised. For example, it would be considered misleading if an insurer received a positive testimonial related to one policy and used that testimonial when advertising a different policy.

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When consumers see or hear an insurance advertisement, state insurance laws require that such advertisement must be truthful, not misleading, and, when appropriate, backed by evidence. State insurance regulators enforce these advertising regulations to the same extent no matter in what medium the advertisement appears.

In addition to enforcement by state insurance regulators, insurance industry participants have increasingly been referring competitor advertisements which they consider to be problematic to the National Advertising Division of the Better Business Bureau ("BBB") National Programs division (the "NAD"), which provides independent self-regulation and non-binding dispute resolution services (although the NAD has no power to award monetary damages or invoke equitable remedies). After reviewing briefs submitted by the parties, the NAD conducts its own investigation, often meeting directly

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with the parties, and then makes a decision as to whether the advertising in dispute is “properly substantiated.” Advertisers who receive an adverse decision from the NAD have the right to appeal adverse decisions to the BBB National Advertising Review Board, a peer review body. Although NAD decisions are nonbinding, and the NAD is not charged with enforcing state insurance laws, noncompliant insurance advertisers risk referral of the matter to an insurance regulator or the NAD decision forming the basis of civil litigation.

If you have any questions regarding this article, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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