



**STATE OF ARIZONA**  
**DEPARTMENT OF INSURANCE**

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**CHARLES R. COHEN**  
Director of Insurance

Circular Letter 2000-14

**TO:** Life and Disability Insurers, Health Care Services Organizations, Agents and Brokers, Insurance Trade Associations, and Interested Parties

**FROM:** Charles R. Cohen  
Director of Insurance

**DATE:** November 9, 2000

**RE:** **Life and Health Advertising**

HB 2600 eliminated the requirement for prior review and approval of life and health insurers<sup>1</sup> advertising matter and sales materials ("advertising materials"), effective January 1, 2001. Life and health insurers, are still required to file all advertising materials no later than the date of first use. (A.R.S. §§ 20-826(T); 20-1018; 20-1057(X); 20-1110(E).) The Department retains the authority to disapprove materials that are false, deceptive, or misleading. The details of the legislation are described in Circular Letter 2000-6 at page 29 and are not repeated here. This circular letter describes the Department's procedures for implementing the new law.

**Exemption Order**

A.R.S. § 20-1110(F) permits the Insurance Director to exempt certain life and disability advertisements from the requirement for filing and approval if the Director determines that the filings are not needed to protect the public. The Director has issued an order exempting certain product filings. A copy of the order is attached.

This statutory authority to exempt filings does not extend to advertising materials filed by service corporations, HMOs, or prepaid dental plan organizations. Those entities are required to file all materials, without exception. A.R.S. §§ 20-826(T); 20-1018; 20-1057(X).

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<sup>1</sup> The changes in the law apply to: insurers selling life or disability insurance; hospital, medical, dental, and optometric service corporations (service corporations); prepaid dental plan organizations, and health care services organizations (HMOs), which are collectively referred to in this circular as "insurers".

### **Voluntary Prior Review**

The Department cannot compel insurers to file advertising materials earlier than the date of first use. However, the Department strongly encourages insurers to voluntarily pre-file the materials at least 15 days in advance of the planned usage date. The Department anticipates that disapproval of advertising materials after they are in circulation will be more costly and difficult for insurers than identification of regulatory issues prior to circulation. Filing in advance of circulation will help avoid formal regulatory intervention and will be in the best interests of all parties.

The average filing is approximately 10 pages. The Department anticipates that 15 days will be adequate to review the average filing. On occasion, the Department receives filings that are substantially greater in length (e.g. a 300 page filing of an internet site.) If the filing is of unusual length or complexity, insurers are advised to submit it sufficiently in advance of the planned usage date to allow for meaningful review.

If materials are pre-filed less than 15 days in advance, Department staff will make every effort to review them, to the extent that time and other workload responsibilities permit, but cannot guarantee that initial review will be complete prior to the stated usage date. Of course, under the new law, an insurer does not require the Department's approval to begin using the materials.

Department analysts will review materials that are voluntarily pre-filed to determine if there is information that the Department finds to be false, misleading, or deceptive. If a Department analyst identifies problems with the pre-filed materials, the analyst will contact the insurer and advise of the perceived problems. It will be up to the insurer to decide whether to adopt or reject the analyst's comments and suggestions, subject to the risk of formal disapproval. The insurer must file the final version of the advertising materials, showing any changes made, on or before the date of first use.

Insurers are also reminded that prior review does not necessarily preclude a later finding that materials are false, deceptive, or misleading. Advertising materials may appear clear when reviewed, but prove to be confusing to consumers, or used in a way that renders the materials false, misleading, or deceptive. The Department will make a good faith effort to identify any regulatory issues prior to use if allowed sufficient time, as described in this circular letter.

### **Submission of Advertising Materials; Transmittal Form**

When an insurer files advertising materials, the insurer must submit an Advertising Transmittal and Certification Form, number P-107ADV Rev 11/00 (copy attached). The form will be available on the Department's web site for insurers to reproduce. This form must accompany all advertising filings. If advertising materials are submitted without a complete form, the materials and the form will be returned to the insurer for correction, unless the defect can be easily resolved by a phone call to the contact person.

**Date of First Use:** This form requires insurers to disclose the date of first planned use so the Department can monitor whether insurers are timely filing the advertising materials, and can appropriately prioritize reviews. The Department recognizes that insurers may not always know the precise date an ad will commence. The Department will accept statements such as “no sooner than a particular date.”

**Insurer Contact:** The form also requires insurers to identify an individual at the insurer who will serve as the primary contact regarding the advertising materials, and be the designated recipient for any five day notice that might be issued regarding the materials. The Department will direct the five-day notice (described below) and all communications regarding the advertising materials to the person named on the form.

**Certification:** The form further requires certification by a representative of the insurer that the advertising materials comply with applicable law. The certification is intended to direct insurers’ attention to the need for internal diligence in reviewing advertising materials for legal compliance. The Department strongly recommends that insurers submit advertising materials to their regulatory compliance section prior to filing with the Department.

### **Further Administrative Action**

If at any time the Department determines that advertising materials are false, misleading, or deceptive, the Department will fax and mail a 5-day notice to the person designated as the contact on the transmittal form. The notice will explain the basis for the determination that the advertising materials are false, deceptive, or misleading. The insurer will have a single opportunity to cure the problems identified in the notice within 5 work days<sup>2</sup> of the date of the notice.

If the insurer fails to cure the deficiencies, the Department may issue an administrative order to the insurer to cease and desist from further use of the advertising materials. The Director’s order will specify a cease and desist date, which will be at least 10 work days from the date of the order, unless the Director makes a finding of the need for summary disapproval, as described below. The Director’s order may also include penalties for use of materials found to be false, misleading, or deceptive.

The Director’s order is appealable under the Uniform Administrative Appeals Act. (A.R.S. § 41-1092 et seq.) An insurer may stay the effectiveness of the order until after an administrative hearing and decision by filing a notice of appeal within 10 days of the order, as provided in A.R.S. § 20-162. If the Director makes an express finding that immediate, summary disapproval is required for protection of public health, safety, or welfare, the Director is not required to give the 5-day cure period, and the insurer cannot stay the effectiveness of the order. In summary disapproval cases, the insurer is entitled to a prompt hearing.

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<sup>2</sup> “Work days” mean Monday through Friday excluding state holidays.

### **Advertising Standards**

The standards for health and life advertising materials are currently set forth in A.A.C. R20-6-201, R20-6-202, respectively, and certain other rules. The Department will undertake the rulemaking process prescribed by A.R.S. Title 41, Chapter 6 to amend the advertising rules to adopt new standards for life and health advertising materials.

### **Solicitations Under A.R.S. §§ 20-1017 and 20-1067**

A.R.S. § 20-1017 (prepaid dental plan organizations) and 20-1067 (health care services organizations) appear to provide a “safe harbor” for an organization’s solicitation materials that the Department has reviewed in advance so long as the materials are not used in a manner that would cause a provider to violate any professional ethics or laws prohibiting solicitation of patients. The statute is directed at assuring that such organizations’ lawful advertising activities contemplated under the Insurance Code, are not regarded as unlawful under providers’ professional licensing statutes.

“Solicitation materials” are not defined, but the statutes refer to the act of “educat[ing] members and potential members on the coverage and operation of the organization’s [health] plan.” The Department has not been able to identify solicitation activities or materials that do not also qualify as advertising materials. The elimination of prior review for advertising materials has made it impossible for an organization to satisfy one of the conditions that triggers the protection of this statute. Therefore, the Department believes that it is superseded by the HB 2600. In the 2001 session, the Department will propose legislation to repeal these two superseded statutes.

Please direct any questions regarding this circular letter to Dennis Babka, Life and Health Supervisor, at 602-912-8460.

1 STATE OF ARIZONA

2 DEPARTMENT OF INSURANCE

3 In the Matter of: )  
4 )  
5 **EXEMPTION STANDARDS FOR )  
FILING OF LIFE AND DISABILITY )  
ADVERTISING FORMS )**  
6 \_\_\_\_\_)

**Docket No. 00A-175-INS**  
**ORDER**

7 Arizona Revised Statutes, Section 20-1110(F) (“A.R.S.”), authorizes the Insurance Director for  
8 the State of Arizona, (“Director”) to exempt and life and disability advertisements from the filing and  
9 approval requirements of A.R.S. §20-1110 if, in his opinion, the filing and approval of the  
10 advertisements are not desirable or necessary for the protection of the public. Accordingly, the Director  
11 makes the following findings:

- 12 1. 10, 756 advertisements were filed with the Department in calendar year 1999.
- 13 2. All advertising for variable life insurance products and variable annuity contracts must  
14 be approved by the Securities and Exchange Commission prior to its use.
- 15 3. None of the advertising filings reviewed by the Department in 1999 for life and annuity  
16 products, disability income products, indemnity dental products or accident only products resulted in  
17 any major adverse findings.
- 18 4. 454 consumer complaints were filed with the Department in 1999 involving life,  
19 annuity, disability income, dental and accident only policies, only six of which related to specific  
20 advertisements proposed to be exempted.
- 21 5. Effective January 1, 2001, the Legislature established a new statutory mechanism for the  
22 review of advertising filings which will require the Department to review advertisements within fifteen  
23

1 days rather than the current thirty days, establish a more detailed tracking process and disapprove  
2 advertisements that are false, deceptive or misleading by administrative order.

3 6. Effective January 1, 2001, all life and health advertisements are required to be filed with  
4 the Department including advertisements of service corporations, who have a current combined  
5 subscriber population of approximately 1,148,000.

6 7. It is anticipated that by relieving Department personnel of reviewing specified  
7 advertising forms the Department will be able focus its limited personnel resources on reviewing only  
8 those advertisements that are more widely distributed, that are more susceptible to misunderstanding by  
9 the public and that have historically been more likely to result in major adverse findings by the  
10 Department.

11 8. IT IS THEREFORE ORDERED, that pursuant to the provision of A.R.S. §20-1110 (F),  
12 the following life and disability advertising forms are exempt from the filing requirements of A.R.S.  
13 §20-1110:

- 14 A. All Individual and Group Life Insurance Advertisements.
- 15 B. All Individual and Group Annuities Advertisements.
- 16 C. All Disability Income Advertisements.
- 17 D. All Indemnity Dental Advertisements.
- 18 E. All Accident Only Insurance Advertisements.

19 9. This Order shall in no way affect any insurer's duty to comply with all requirements of  
20 Title 20, Arizona Revised Statutes relating to all advertisements used in the State of Arizona. The  
21 Director may ensure compliance by conducting an investigation or market conduct examination of any  
22 company subject to this Order as well as by utilizing all other powers and remedies available under the  
23 law.



## Arizona Department of Insurance Advertising Transmittal and Certification Form

NAIC # \_\_\_\_\_  
 Company Name \_\_\_\_\_  
 Company Address \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

For Department of Insurance Use Only

Date Received \_\_\_\_\_  
 Analyst \_\_\_\_\_  
 Filed: Date \_\_\_\_\_ Initials \_\_\_\_\_

Type of Entity:           Insurance Company  
                               Health Care Services Organization  
                               Hospital, Medical, Dental, Optometric Service Corporation  
                               Prepaid Dental Plan

Contact Person\* \_\_\_\_\_ Title \_\_\_\_\_  
 Telephone Number \_\_\_\_\_ FAX Number \_\_\_\_\_

**Type of Advertising Material Being Filed:**

Radio Commercial	Television Commercial	Brochure
Billboard	Magazine	Newspaper
Internet Web Site	Mailer	Response Card
Other _____ (Describe)		

**Planned Use:**

Date advertising form(s) will first be used \_\_\_\_\_  
 Markets advertising form(s) will be used in \_\_\_\_\_  
 Number of times advertising form(s) will be shown or printed \_\_\_\_\_

**Product(s) Being Advertised:**

Cancer/Specified Disease	Major Medical	Vision Care
Dental	Medicare Risk	Prepaid Dental
Hospital Surgical	Medicare Select	HCSO
Hospital Indemnity	Medicare Supplement	Other _____ (Describe)
LTC/Home Healthcare		

<u>Form Number</u>	<u>Form Name</u>

Note: Additional forms should be listed on a separate sheet and attached to this Transmittal Form.

**Company Officer Certification**

I have reviewed or supervised the review of the above forms. To the best of my knowledge and belief they are in conformance with applicable provisions of Title 20, Chapter 6 of the Arizona Revised Statutes, Chapter 20 of the Arizona Administrative Code and applicable orders by the Director of Insurance. I also acknowledge responsibility for the validity, accuracy and completeness of transmittal and enclosures in this filing.

\_\_\_\_\_  
 Signature of Company Officer/Health Plan Corporate Officer

\_\_\_\_\_  
 Typed Name and Title

\_\_\_\_\_  
 Date

\*Person you have designated to receive any 5-day notice.



