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Insurance Advertising Compliance: 10 Rules Brokers Must Know

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Developing creative, effective insurance advertisements — that also comply with the law — can be a daunting task. Fortunately, states have issued regulations that provide a myriad of guidance to help brokers understand what is, arguably, the most important aspect of the advertising design process. The purpose of these regulations is to “assure *truthful and adequate disclosure* of all material and relevant information” in insurance advertising and to prohibit language that may *deceive or mislead* the insurance-buying public.

Outlined below are 10 key rules aimed at helping brokers create effective and compliant insurance advertisements. While these rules focus on California’s Regulations for Disability Insurance Advertisements (“Regulations”) (10 CCR §§ 2535.1-2537), most apply to the advertising of other products as well, unless otherwise noted.

1) Compliance is a Requirement, Not an Option

State regulations mandate that all advertisements, regardless of who created the advertisement, are the responsibility of the underwriting insurer. As a result, some brokers may believe this relieves them of liability. However, the California Insurance Code (“Code”) places the onus on brokers as well, prohibiting them from making or disseminating information that is known to be untrue, deceptive or misleading.

Brokers are obligated to follow the requirements outlined in the Code. Insurers also typically require brokers to comply with relevant laws and regulations, as well as the insurers’ internal advertising policies and procedures. It is common practice for insurers to require that brokers submit their advertising material for approval and archiving. In fact, California requires insurers to establish and maintain “a system of control over the content, form and method of dissemination of all advertisements of its policies.” Insurers may opt to store the advertisements created by brokers or they may require brokers to store the pieces themselves — for a minimum of four years.

2) The Definition of an Advertisement

Advertisements take various forms and include:

- Printed and published material, audio visual material and descriptive literature of an insurer, used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards and similar displays
- Descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public, including, but not limited to, circulars, leaflets, booklets, depictions, illustrations and form letters
- Prepared sales presentations and other materials for use by agents, brokers and solicitors

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State regulations mandate that all advertisements, regardless of who created the advertisement, are the responsibility of the underwriting insurer.

It is also useful to understand what is not an advertisement. Material used solely for the training and education of an insurer's employees, agents and brokers is not considered advertising. Usually, the insurer will put a notice or disclaimer on these materials, such as "For Agent Use Only." This notice informs the broker that the material is not intended for public dissemination as it has likely not received advertising compliance approval from the insurer. Individual communications with current policyholders, other than material urging policyholders to increase or expand coverage, are also not considered advertisements. For example, a communication from a broker to a policyholder inquiring whether claims forms have been received is not an advertisement.

3) The Various Types of Advertisements

There are three types of advertisements: institutional advertisements, invitations to inquire and invitations to contract.

- The sole purpose of an institutional advertisement is to influence a person's interest in the concept of insurance or to promote the insurer. These advertisements do not have as many requirements as the other two types.
- Invitations to inquire are more common and are designed to create a desire to inquire further about the product. An invitation to inquire is limited to a brief description of the loss for which the benefit is payable and cannot refer to the cost of coverage. It may also contain the dollar amount of the benefit

and/or the period of time during which the benefit is payable.

- An invitation to contract is an advertisement that refers to the cost of coverage – an important factor that separates it from an institutional advertisement and an invitation to inquire. This type of advertisement is subject to numerous disclosure requirements.

4) Disclosures are Meant to be Disclosed

To meet regulatory requirements, certain disclosures must be included in insurance advertisements. For example, if an invitation to inquire contains either the dollar amount of the benefit or the period of time during which the benefit is payable, it must also contain the following disclosure (or something substantially similar): "For costs and further details of the coverage, including exclusions, any reductions or limitations, and the terms under which the policy may be continued in force, see your agent or write to the company."

Invitations to contract contain more disclosures than invitations to inquire because they also include the cost of coverage. When an invitation to contract refers to the cost of the policy, in addition to a dollar amount, a period of time for which any benefit is payable, a specific policy benefit, or the loss for which the benefit is payable, the advertisement must disclose the exceptions, reductions and limitations affecting the basic provisions of the policy. It must also disclose provisions related to renewability, cancellation and termination.

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Finally, disclosures must be conspicuous. Although specifications for the conspicuous placement of disclosures are not included in the Regulations, common sense dictates that using a six-point font for disclosures — on a piece that uses a 12-point font for the marketing message — may not be the best choice. Disclosures must be prominently placed, easy to read and positioned close to the statements to which they relate, or under appropriate captions, not obscured by, or intermingled with, other text.

5) Staying Current on the Law is Key to Being in Compliance

Recently, the California Department of Insurance (CDI) amended its advertising regulation regarding exceptions, reductions and limitations by requiring that an example of a benefit reduction (“offset”) be included in invitations to contract used to market group disability income insurance.

The example must include at least two common reductions that would reduce the dollar amount of the maximum benefit an insured would receive. It must also be placed prominently where the maximum benefit is described. The Regulations include an offset example, which can be borrowed or customized.

Brokers must rely on their insurers, or continuously monitor state regulations themselves to ensure they create and use compliant advertisements.

6) Identify the Underwriting Insurer

The Regulations require that the actual name

of the insurer be stated in all of an insurer’s advertisements. Brokers cannot use the trade name, an insurance group designation, name of the parent company, name of a particular division of the insurer, service mark, slogan or symbol, without disclosing the name of the actual insurer. This does not mean that a broker’s name cannot be included in the advertisement; it simply means that the underwriting insurer of the product must be clearly and readily apparent to the reader. Also, given that parent companies can have several insurers in their family, it is important to verify that the advertisement names the correct insurer and that the name being used is the complete name of the company.

7) Avoid “Insurance-ese”

Brokers and other industry professionals tend to use “insurance-ese,” which may not be readily understood by the general public when included in an advertisement. As stated in the Regulations, “Words or phrases, the meaning of which is clear only by ... familiarity with insurance terminology, shall not be used.” If the purpose of the Regulations is to assure truthful and adequate disclosure, and prohibit deception and misrepresentation, using words that only insurance professionals can understand defeats the purpose.

For example, the term “pre-existing condition” or “pre-ex” cannot be used alone in an invitation to contract. It must be accompanied by an appropriate definition or description. Additionally, invitations to contract must disclose the extent of the “pre-ex” in negative

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terms; a “pre-ex” cannot be described in a positive manner.

If insurance-specific terminology cannot be avoided, brokers should clearly define the word or phrase and include an example. The requirements include a variety of terms to avoid.

8) Prohibited Words and Phrases

The Regulations prohibit the use of certain words and phrases in insurance advertising. For example, it is not acceptable to say “anyone can join” when, in fact, a medical questionnaire must be completed and the responses to the questions may result in a denial of coverage. Words used to generate excitement such as “new,” “unique,” or “breakthrough” are to be avoided. Few, if any, insurance products truly meet the definition of these words.

9) Comparisons Should be Used with Caution

Comparisons often make compelling sales tools, but they cannot be misleading, unfair or incomplete. “Twisting” is making a misleading representation, or unfair or incomplete comparison of insurance policies or insurers to influence a person to convert from one policy or insurer to another policy or insurer. Twisting is not allowed. Therefore, brokers should clearly understand and accurately represent a competing offer when creating a comparison.

10) Scare Tactics are Forbidden

Creating undue fear or anxiety is unacceptable under the Regulations. For example, threatening someone with financial disaster, financial

distress or financial shock will likely be looked upon by regulators as intimidating, unnecessary and in violation of advertising regulations.

“Cancer kills someone every two minutes,” is another example of unacceptable language. To include this type of statement in an advertisement, a broker should also include the number of people represented in the population. Is it a population of one million, 10 million or 100 million? The source and date of the statistic must also be cited.

An Insurer’s Compliance Department is a Valuable Resource

Not only should a broker read and follow state advertising regulations, but also the advertising policies and procedures of the insurance company whose products are being marketed. These policies and procedures are often drafted by insurance advertising experts. Brokers should ask the insurance company’s compliance department for advertising compliance training, a list of “dos” and “don’ts” and samples of compliant advertising language. The advice and suggestions of these experts are shaped not only by experience with the law, but also by experience with market conduct exams (examinations by insurance regulators), complaints and even litigation. They are knowledgeable and could be very helpful to brokers as they create advertisements that are both effective and compliant. ♦

This article is for informational purposes only and is not intended to serve as legal advice.

To meet regulatory requirements, certain disclosures must be included in insurance advertisements.

Push vs. Pull: New Strategies for Expanding Disability Insurance Marketing and Distribution

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For more than two decades, penetration in the long-term disability insurance market has remained stagnant, with fewer than 40 percent of all workers participating. This is an alarming statistic when considering that more than half of the employees in the United States lack the benefit that could protect their most valuable asset — their income stream. For these individuals, even the loss of just a few weeks of pay could trigger the onset of tremendous financial hardship.

The low market penetration rate provides a unique opportunity for disability insurers and producers. By educating employers on the value of disability insurance and developing strategies to bring disability insurance products to new customers and markets, brokers can offer a critically important benefit and expand market share. The potential opportunity is substantial; by insuring an additional 13.5 million workers — only half of all those who are uninsured today — the industry could realize an additional \$2.4 billion in premiums.

Reaching Out to New Buyers

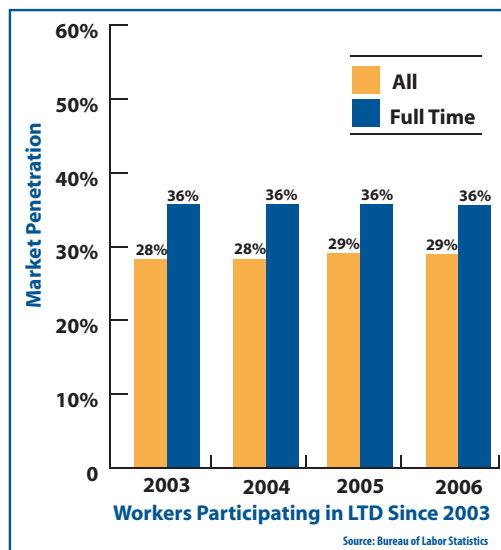
Current marketing and distribution models do not earnestly seek out prospective new buyers. Existing models predominantly focus on employers who already understand the need for disability insurance and consequently offer the product to their employees. To expand market penetration, the industry must develop new products and strategies designed to attract those employers who do not offer disability insurance today, particularly those who do not understand the need or the value of the product.

Insurers who can create unique product offerings, and subsequently implement marketing and distribution models or strategies to bring them to customers, will gain market share and increase revenue. Brokers who partner with these insurers can expect to share in this success.

Leveraging “Push” vs. “Pull” Marketing

The traditional disability insurance distribution model emphasizes **pull marketing**, which targets existing customers and markets primarily to companies currently pursuing a disability insurance product. In a traditional pull marketing model, accounts frequently rotate from one insurer to another. The challenge with a pull marketing approach is that it does not reach out to the first-time buyer — a buyer who is critical to expanding market share. In the current environment, there are few opportunities to grow

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the business or the market, as multiple insurers continue to compete for the same customers.

Push marketing directs or “pushes” new products into the marketplace, targeting all companies — including those that are not specifically seeking a disability insurance plan — and cross selling to existing customers with product offerings that might be a better fit for the organization. One key advantage of push marketing is the inherent lack of competition from other carriers that are operating within a traditional RFP model. Unlike the traditional model, brokers who bring their unique products directly to the employer are much less likely to find themselves competing with 10 other carriers as would be the case in a typical RFP scenario.

Push marketing changes the distribution model by placing the insurer and sales representative in more proactive roles. Traditionally, there has been little incentive for producers and sales representatives to solicit first-time buyers in untapped markets. It clearly takes more time and effort to market and sell a product to a prospect that must be educated on the value of disability insurance, yet compensation plans rarely distinguish between a sale to an existing customer and a sale to a first-time buyer. Insurers must provide incentive packages that appropriately compensate brokers and sales representatives for the additional work required to build their disability business.

Because it brings new ideas to the market, push marketing can also be used effectively in non-traditional distribution models. Chambers of Commerce and employer associations, for

example, are frequently looking for innovative products to bring to their members, particularly if these products are more affordable than traditional solutions.

Developing Innovative and Affordable Disability Insurance Products

Innovative and affordable disability insurance products, particularly those with limited durations, greater cost sharing and plans for high-risk groups, must be available if push marketing is to be successful. There are myriad possibilities to develop innovative disability products that provide protection for employees and cost savings for employers. Here are a few product examples*:

- Tenure Disability addresses common challenges experienced in traditionally high-turnover industries, such as retail or automotive sales. Employers in these industries that consider providing disability insurance to their employees struggle with a lack of appropriate, flexible long-term disability solutions; the high cost of insuring employees; and low employee participation rates.

To address these challenges, a Tenure Disability offering would align the benefit duration with an employee’s contribution to the employer. Unlike traditional long-term disability plans that provide coverage until age 65, if an employee is hurt and unable to work, Tenure Disability would provide a disability benefit equal to an employee’s length of service. For example, a retail sales associate who

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had been employed for three years would earn a defined three-year disability benefit.

Tenure Disability would provide a reduced benefit duration for employees with a shorter employment history with the company, and offer significant cost savings for both the employer and the employee — while still providing a meaningful level of employee protection.

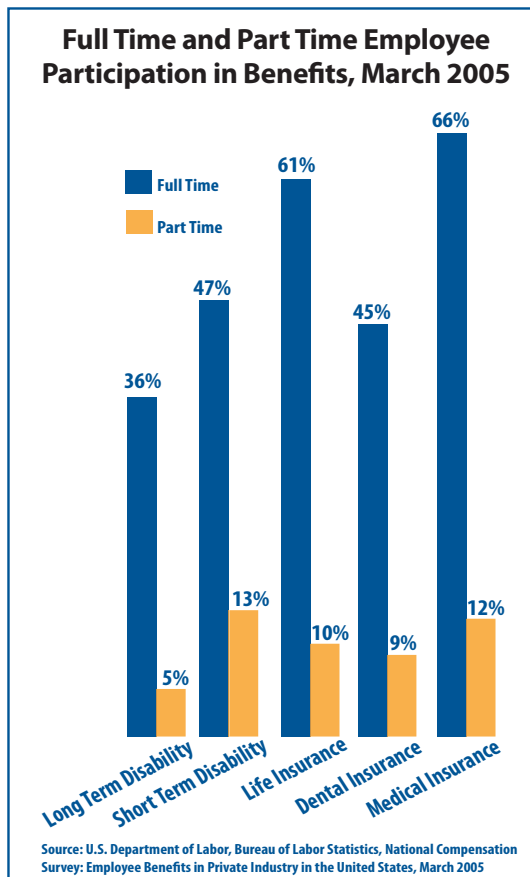
- Gap Filler is another flexible, affordable disability insurance product designed to complement Social Security Disability Income (SSDI) coverage. The solution provides a benefit for disabled employees — one that covers the time period between the end of their short-term disability coverage, or employer-provided sick leave, and the beginning of their SSDI coverage.

As has been widely reported, the Social Security Administration is severely underfunded and understaffed which has resulted in a vast backlog of claim applications. It takes nearly two years for an SSDI claim to receive approval, even though employees are eligible for benefits after five months.

By utilizing a Gap Filler disability insurance product, employers can offer employees protection at a lower cost with premiums that would average 40 to 50 percent less than those required for traditional long-term disability plans. A Gap Filler product would also eliminate complicated integration calculations and the need to recover Social Security overpayments, adding to ease of administration.

- Severe Disability insurance is an affordable benefit that can be made available to ALL employer groups.

For those industries or professions that are perceived to be of higher risk than others, it can be difficult, or nearly impossible, to obtain traditional disability insurance. It is important, however, to view these industries as “high risk” rather than “poor risk,” and to develop products that are affordable and provide employees with a meaningful level of protection.



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Even in “high risk” industries, employees can suffer from cancer, heart disease or other serious illnesses unrelated to the type of work they do. A Severe Disability product could be designed to cover common, yet severe, disabilities, while providing a reduced benefit for other claims. With clearly defined payout amounts, high-risk restrictions and a condition-driven schedule, a Severe Disability product could be made available at a much lower cost than traditional disability insurance.

Understanding a Successful Close Rate in Disability Insurance

Even with innovative new products in place and a push marketing strategy designed to expand the availability of these products in the marketplace, the disability insurance industry’s own perception of what is viewed as a successful close rate on a

disability sales initiative can impede success. It is important to keep in mind that what is defined as a successful outcome should be viewed based on the endeavor itself. The average long-term disability insurance close ratio is eight percent. If producers or sales representatives can leverage innovative new product offerings to expand that ratio by just two points to 10 percent, the business and market share will grow substantially.

Utilizing traditional pull marketing techniques has not worked to increase market penetration thus far, and there is no reason to believe it will moving forward. The opportunity to expand market share exists if you are willing to invest in a push marketing strategy that targets the first-time-buyer, delivers a unique product and maximizes distribution models. ♦

*NOTE: Marketing these products may require State Department of Insurance approval.

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