

October 6, 2016

RE: First Consulting Advertising Regulatory Update: West Virginia

Executive Summary

West Virginia immediately requires filing of advertising for any product that has a medical component. They are concerned that consumers not be misled regarding supplementary health coverage.

As always, please let me know if you have a question on this information or on any advertising concern you may have. CJ.Rathbun@FirstConsulting.com or 816.391.2740.

First Consulting Discussion

First Consulting staff who attended the recent LOMA-LIMRA Critical Illness Forum reported that West Virginia had started requiring Critical Illness policy advertising to be filed for approval.

After researching the state website and finding no Emergency Rule or Bulletin from the commissioner, we reached out to the West Virginia Insurance Commission. On October 5, they responded with the following information.

Commissioner Riley decided to use his discretion to require the advertising filings for any product that in any way, shape, or form mirror a medical line, even those critical illness products that when purchased with all available riders would somewhat function in practicality as a hospital indemnity plan. We are working with carriers as different filings come in to spread the word. Please know that all carriers are facing this requirement.

SPECIFICS OF THE NEW REQUIREMENT

Further, our contact indicated that this requirement and change in procedure stemmed primarily from a limited benefit policy being sold in the state using the phrase “minimum essential” benefits. Consumers were misled into thinking they were purchasing a major medical policy (essential) instead of one with limited benefits (minimum).

The commission confirmed that:

1. Advertisements must be approved prior to use.
2. File 60 days prior to first use.
3. Submissions must be through SERFF.
4. This standard review requirements [checklist](#) must be included.

Additionally, the reviewers are asking these questions as they analyze the submission:

- Does it guarantee something it shouldn't?

- Is there a disclosure that says it is not minimum essential coverage and could cause them to pay more on their taxes?
- Is it in any way misleading that they are buying a full plan?

The commission has 60 days to review and approve. However, their turnaround times are running about two weeks right now. They also stress that if you call and talk with them, they may be able to put a 'rush' on a submission.

WEST VIRGINIA CODE OF STATE RULES

The advertising compliance laws are similar in West Virginia to most states. Two items of note are highlighted below for your reference. Additionally, the commissioner is given broader power to promulgate or adopt additional rules as are necessary to discharge his or her duties.

[114-10.1 through 114-10.20 Advertisement of Accident and Sickness Insurance](#)

[CHAPTER 33. INSURANCE Article 2 §33-2-10 Rules and Regulations](#)