

# Chapter 284-78 WAC

## JOINT UNDERWRITING ASSOCIATION FOR DAY CARE INSURANCE

### WAC

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**WAC 284-78-010 Purpose.** The purpose of this chapter is to establish a joint underwriting association pursuant to chapter 141, Laws of 1986, to provide liability insurance for day care services.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-010, filed 8/29/86.]

**WAC 284-78-020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Insurer" means any insurance company that, on or after July 1, 1986, possesses a certificate of authority to write property and casualty insurance within this state on a direct basis.

(2) "Day care insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of negligence or malpractice in rendering professional service by any licensee.

(3) "Association" means the joint underwriting association established pursuant to the provisions of chapter 141, Laws of 1986.

(4) "Licensee" means any person or facility licensed to provide day care services pursuant to chapter 74.15 RCW.

(5) "Commissioner" means the insurance commissioner of the state of Washington.

(6) "Service insurer" means any insurance company designated by the association and approved by the commissioner to issue policies pursuant to this chapter.

(7) "Board" means the governing board of the association.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-020, filed 8/29/86.]

**WAC 284-78-030 The association.** (1) A nonprofit joint underwriting association for day care insurance is (8/29/86)

hereby established. Membership in the association shall be mandatory for all insurers that on or after July 1, 1986, possess a certificate of authority to write property and casualty insurance within this state on a direct basis. Every such insurer shall be and remain a member of the association and fulfill all its membership obligations as a condition of its authority to continue to transact property and casualty insurance business in this state.

(2) The association shall remain inactive, except for the actions of the board enumerated in WAC 284-78-050 through 284-78-080, until it is activated by the commissioner as provided in WAC 284-78-040.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-030, filed 8/29/86.]

**WAC 284-78-040 Activation of association.** If the commissioner finds that any licensee is unable to obtain day care insurance with liability limits of at least one hundred thousand dollars per occurrence from the voluntary insurance market, or through any market assistance plan organized pursuant to section 906, chapter 305, Laws of 1986, the commissioner may notify the board in writing of such finding and may direct the board to activate the association and commence writing day care insurance within thirty days of receipt of the notice in accordance with the provisions of these regulations.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-040, filed 8/29/86.]

**WAC 284-78-050 Administration.** (1) The association shall be administered by a governing board, subject to the supervision of the commissioner, and operated by a manager appointed by the board.

(2) The board shall consist of nine members. Five board members shall be insurers, one of which shall be appointed by the commissioner from each of the following: American Insurance Association, Alliance of American Insurers, National Association of Independent Insurers, all other stock insurers, and all other nonstock insurers. A sixth board member shall be the insurer designated as the service insurer for the association (or, if there is more than one service insurer, the sixth board member shall be such service insurer as the commissioner designates as the board member). The other three board members shall be licensees who are appointed by the commissioner to so serve, none of whom shall be interested, directly or indirectly, in any insurer except as a policyholder. Board members shall serve for a period of one year or until their successors are appointed. Not more than one insurer in a group under the same management or ownership shall serve on the board at the same time. At least one of the six insurers on the board shall be a domestic insurer. All

members of the board shall serve at the pleasure of the commissioner.

(3) Each person serving on the board or any subcommittee thereof, each member insurer of the association, and each officer and employee of the association shall be indemnified by the association against all costs and expenses actually and necessarily incurred by him, her, or it in connection with the defense of any action, suit, or proceeding in which he, she, or it is made a party by reason of his, her, or its being or having been a member of the board, or a member or officer or employee of the association, except in relation to matters as to which he, she, or it has been judged in such action, suit, or proceeding to be liable by reason of wilful misconduct in the performance of his, her, or its duties as a member of such board, or member, officer, or employee of the association. This indemnification shall not be exclusive of other rights as to which such member, or officer, or employee may be entitled as a matter of law.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-050, filed 8/29/86.]

**WAC 284-78-060 General powers and duties of the board.** (1) Within thirty days after the appointment of its members by the commissioner, the board shall prepare and adopt articles of association consistent with this chapter, subject to approval by the commissioner. In a timely manner thereafter, the board shall take all actions necessary to prepare the association to receive applications and issue policies, when and if the commissioner activates the association as provided in WAC 284-78-040. These actions shall include the preparation of all necessary policy forms and rating information to be filed with the commissioner for approval and all necessary operating manuals and procedures to be followed.

(2) The board shall meet as often as may be required to perform the general duties of the administration of the association or on the call of the commissioner. Three insurer members of the board shall constitute a quorum.

(3) The board may appoint a manager, who shall serve at the pleasure of the board, to perform any duties necessary or incidental to the proper administration of the association, including the hiring of necessary staff.

(4) The board shall annually furnish to all insurer members of the association and to the commissioner a written report of operations.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-060, filed 8/29/86.]

**WAC 284-78-070 Assessments.** (1) The board may calculate, levy, and collect assessments from member insurers whenever necessary for the orderly operation of the association.

(2) After its formation, the board may calculate, levy, and collect from member insurers a start up assessment to pay initial expenses of the association and to establish any necessary reserves. The start up assessment shall not exceed one million dollars. For ease of administration, the share of the start up assessment levied upon and collected from each member insurer shall be the same for each member insurer, regardless of size and regardless of whether it is actively writing business in this state.

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(3) Any assessment subsequent to the initial start up assessment shall be used to offset losses and/or expenses in excess of income received by the association. These assessments may be made as often as the board determines is necessary. To the extent such an assessment exceeds one million dollars, each member insurer shall be assessed a proportionate share relating to premium volume. The first one million dollars of such an assessment shall be levied and collected in equal amounts from each member insurer.

(4) Any member insurer failing to remit its assessment when due is subject to revocation of its certificate of authority to write property and casualty insurance in this state.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-070, filed 8/29/86.]

**WAC 284-78-080 Statistics, records, and reports.** (1) The association shall maintain separate statistics on business written and shall make the following quarterly report to the commissioner:

- (a) Number of applications received by the association;
- (b) Number of applications accepted by the association and the total and average premiums charged, including the high and low premiums;
- (c) Number of risks declined;
- (d) Number of risks conditionally declined and the number ultimately accepted after having been conditionally declined; and
- (e) Number of risks cancelled.

(2) In addition to statistics, the association shall maintain complete and separate records of all business transactions, including copies of all policies and endorsements issued by the association, and records of reasons provided for each declination of coverage or cancellation of coverage, including the results of any on-site inspections, or investigations of applicants or insureds or their employees.

(3) Regular reports of the association's operations shall be submitted to all members of the board, such reports to include, but not necessarily to be limited to, premiums written and earned, losses, including loss adjustment expense, paid and incurred, all other expenses incurred, outstanding liabilities, and, at least once a year, the proposed annual budget of the association for the next fiscal year.

(4) The books of account, records, reports, and other documents of the associations shall be open to the commissioner for examination at all reasonable times.

(5) The books of account, records, reports, and other documents of the association shall be open to inspection by members only at such times and under such conditions as the board shall determine.

(6) The books of account of any and all servicing insurers may be audited by a firm of independent auditors designated by the board.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-080, filed 8/29/86.]

**WAC 284-78-090 Eligibility of licensees for coverage.** Any licensee that is unable to obtain day care insurance with liability limits of at least one hundred thousand dollars per occurrence from the voluntary insurance market or from any market assistance plan organized pursuant to section 906, chapter 305, Laws of 1986, is eligible to apply for coverage

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through the association. The association's service insurer shall promptly process such application and, if the licensee is judged to be an acceptable insurable risk, offer coverage to the licensee. In view of the purpose of chapter 141, Laws of 1986, every licensee will be presumed to be an acceptable insurable risk for the association. To refuse coverage to any licensee meeting the other eligibility requirements of this section, the association must have the prior written approval of the commissioner. The commissioner will grant such approval only if the association demonstrates that extraordinary circumstances justify refusing coverage to such individual licensee.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-090, filed 8/29/86.]

**WAC 284-78-100 Standard policy coverage—Premiums.** (1) All policies issued by the association shall have liability limits of at least one hundred thousand dollars per occurrence and shall be issued for a term of one year.

(2) Premiums shall be based on the association's rate filings approved by the commissioner in accordance with chapter 48.19 RCW. Such rate filings shall provide for modification of rates for licensees according to the type, size, and past loss experience of each licensee, and any other differences among licensees that can be demonstrated to have a probable effect upon losses.

(3) A policy shall be offered which provides liability coverage with respect to child abuse, whether a sexual nature or not. In the discretion of the association, such policy may exclude from coverage an individual who directly commits or participates in the actual abuse, but it may not exclude from coverage other persons who may be liable only vicariously for such abuse. In addition, the association may offer coverage with a broader exclusion with respect to coverage for child abuse.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-100, filed 8/29/86.]

**WAC 284-78-110 Renewal of policies.** (1) Policies written by the association will not automatically renew. To obtain continuing coverage by the association, a licensee must again satisfy initial eligibility requirements under WAC 284-78-090 at the end of the expiring policy term.

(2) The association shall notify covered licensees at least forty-five days prior to the expiration of a policy term of the need to submit a new application for coverage to the association to continue coverage.

(3) If the association fails to provide the required notice, the existing policy shall continue in force until the association has provided the required notice. In such case, premium shall be charged the licensee on a pro rata basis for coverage during the extended coverage period.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-110, filed 8/29/86.]

**WAC 284-78-120 Cancellation of policies.** (1) No policy or binder issued pursuant to this chapter shall be cancelled except:

(a) For nonpayment of premium, in which case cancellation of the policy shall be effected by providing ten days written notice in advance of the date of cancellation. Payment to the association of all premiums due, prior to the effective date of the cancellation, shall continue coverage as if no cancellation notice had been issued; or

(b) With the prior written approval of the commissioner upon the request of the board, for cause which would have been grounds for refusal of coverage under WAC 284-78-090.

(2) Notice of cancellation, accompanied by the actual reason therefor, shall be sent to the named insured.

(3) Any cancellation notice sent to the named insured shall be accompanied by a statement that the named insured has a right of appeal to the commissioner.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-120, filed 8/29/86.]

**WAC 284-78-130 Right of appeal.** (1) Any applicant or insured, currently licensed pursuant to chapter 74.15 RCW, shall have a right of appeal to the commissioner, including the right to appear personally before the commissioner or his or her designee, if requested by the person seeking appeal, from any decision by the board to deny, cancel, or nonrenew coverage.

(2) Appeals to the commissioner under this provision shall be handled in accordance with chapters 48.04 and 34.04 RCW.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-130, filed 8/29/86.]

**WAC 284-78-140 Cooperation of producers.** All licensed insurance agents and brokers shall provide full cooperation in carrying out the aims and the operation of the association.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-140, filed 8/29/86.]

**WAC 284-78-150 Commissions.** The association shall pay commissions as established by the board on policies issued pursuant to this chapter to the licensed agent or broker designated by the applicant.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-150, filed 8/29/86.]

**WAC 284-78-160 Additional notice required.** Any notice of cancellation or nonrenewal of day care insurance given by an insurer to a licensee potentially eligible for coverage through the association shall include or be accompanied by an explanation of the licensee's right and procedure to obtain insurance through the association.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-160, filed 8/29/86.]

**WAC 284-78-170 Termination of association.** The association shall have perpetual existence, subject to repeal or modification of this chapter.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-170, filed 8/29/86.]

**WAC 284-78-180 Effective date.** This chapter is effective July 1, 1986.

[Statutory Authority: RCW 48.02.060 (3)(a). WSR 86-18-043 (Order R 86-3), § 284-78-180, filed 8/29/86.]