

**WAC 284-20A-040 Use of "substantive underwriting factors" when underwriting new or existing medical malpractice insurance policies.**

(1) The definition of "underwriting" in RCW 48.18.547 (1)(e) is broad, and includes selecting, rejecting and pricing a risk. Underwriting occurs when a provider first applies for insurance and when the insurer evaluates the provider for renewal purposes.

(2) Insurers are prohibited from considering the factors listed in RCW 48.18.547(2) during any underwriting process unless the insurer can demonstrate that other substantive underwriting factors were also considered. Upon request by the commissioner, an insurer must demonstrate that a completed underwriting process complies with RCW 48.18.547(2). Insurers must retain documentation of each underwriting process for three years.

(3) For the purposes of this section:

(a) **"Substantive underwriting factor"** means a factor that is very important to an underwriting decision. An insurer may use other substantive underwriting factors in an underwriting process if they are comparable in importance to the factors listed in this definition. Examples of substantive underwriting factors include, but are not limited to:

- (i) Criminal acts, including sexual misconduct;
  - (ii) Changes in financial condition;
  - (iii) Changes in operations that have a reasonable relationship to underwriting, such as changes in:
    - (A) Management or professional staff;
    - (B) Location of business;
    - (C) Business relationships;
    - (D) Medical specialty; or
    - (E) Medical procedures performed;
  - (iv) Failure to comply with loss control or loss prevention recommendations within a reasonable period;
  - (v) Failure to provide information necessary to underwrite the policy;
  - (vi) History of claims, if the insurer can demonstrate they adversely affect the insured's risk profile;
  - (vii) Investigations, disciplinary action, restrictions or limitations imposed by or related to a state or federal licensing or administrative agency, law enforcement agency, attorney general, or similar agency or official;
  - (viii) Performing procedures outside the scope of an individual's license and/or training;
  - (ix) Substance abuse;
  - (x) Inadequate facilities, equipment, or maintenance of facilities or equipment;
  - (xi) Inadequate staff training program;
  - (xii) Peer review or credentialing actions, or changes in staff privileges, such as suspension, restriction, revocation, surrendered privileges, or other termination; or
  - (xiii) Unprofessional conduct, as defined in RCW 18.130.180.
- (b) **"Underwriting process"** means any series of actions that produce an underwriting decision that affects a provider.

[Statutory Authority: RCW 48.02.060 and 48.18.547. WSR 06-17-054 (Matter No. R 2006-01), § 284-20A-040, filed 8/10/06, effective 9/10/06.]