

# Chapter 284-20A WAC

## RULES THAT APPLY TO INSURERS THAT UNDERWRITE MEDICAL MALPRACTICE INSURANCE

### WAC

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**WAC 284-20A-010 Purpose.** This chapter describes the underwriting restrictions that apply to medical malpractice insurers under RCW 48.18.290, 48.18.2901 and 48.18.547.

[Statutory Authority: RCW 48.02.060 and 48.18.547. 06-17-054 (Matter No. R 2006-01), § 284-20A-010, filed 8/10/06, effective 9/10/06.]

**WAC 284-20A-020 Definitions that apply to RCW 48.18.290, 48.18.2901, 48.18.547 and this chapter.** The definitions in RCW 48.18.547(1) apply to this chapter. In addition, the definitions in this section apply throughout the chapter:

- (1) **"Medical malpractice"** has the same meaning as in RCW 48.140.010(9).
- (2) **"Provider"** includes both a facility and provider as defined in RCW 48.140.010 (6) and (7).
- (3) **"Risk profile"** means characteristics of a provider that increase or decrease the potential for future medical malpractice claims that may fall in the scope of coverage of a medical malpractice insurance policy.

[Statutory Authority: RCW 48.02.060 and 48.18.547. 06-17-054 (Matter No. R 2006-01), § 284-20A-020, filed 8/10/06, effective 9/10/06.]

**WAC 284-20A-030 Information a medical malpractice insurer must provide to the insured if the insurer takes an adverse underwriting action.** Significant risk factors are the components of a risk profile that require notice under RCW 48.18.547(3). If a provider has any significant risk factors that affect the provider's risk profile and may increase the potential for future medical malpractice claims, the insurer must explain each significant risk factor to the insured in clear and simple language.

- (1) The insurer must explain to the insured how each significant risk factor adversely affects the insured's:
  - (a) Eligibility for insurance;
  - (b) Eligibility for premium credits; or
  - (c) Ability to buy insurance without the application of rating rules that result in premium debits, surcharges, or assessments.

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- (2) Insurers do not have to provide notice if:
  - (a) The provider asks for product options that increase premium or reduce coverage, such as:
    - (i) Deductible or retention changes;
    - (ii) Increased coverage limits; or
    - (iii) Coverage options.
  - (b) The provider changes their business in a way that increases exposure, such as adding staff or types of services performed; or
  - (c) The classification plan includes rating rules that result in automatic premium increases, such as a claims-made policy step-rating rule that increases premium based on years of practice.

(3) For the purposes of this section:

- (a) **"Classification plan"** means a plan to formulate different premiums for the same coverage based on group characteristics. Classification plans group, for rating purposes, risks that have similar insuring, risk and exposure factors.
- (b) **"Premium"** has the same meaning as in RCW 48.18.170.
- (c) **"Rating rule"** means a factor, formula, rule or procedure used to calculate premium. Rating rules include, but are not limited to:
  - (i) Experience rating plans;
  - (ii) Rating factors or tiers;
  - (iii) Surcharge or discount rules; and
  - (iv) Schedule rating plans.
- (d) **"Significant risk factor"** means a material element of the insured's risk profile that contributes to or results in an adverse underwriting action by a medical malpractice insurer. Substantive underwriting factors, as defined in WAC 284-20A-040 (3)(a) are presumed to be significant risk factors.

[Statutory Authority: RCW 48.02.060 and 48.18.547. 06-17-054 (Matter No. R 2006-01), § 284-20A-030, filed 8/10/06, effective 9/10/06.]

**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.

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(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. 06-17-054 (Matter No. R 2006-01), § 284-20A-040, filed 8/10/06, effective 9/10/06.]

**WAC 284-20A-050 What constitutes a medical malpractice insurance policy for the purposes of RCW 48.18.290 (1)(b) and 48.18.2901 (1)(a)(ii)?** A medical malpractice insurance policy means an insurance policy written with the principal intent to provide medical malpractice insurance. For the purposes of this section, a policy does not include medical malpractice insurance written as ancillary coverage to a general liability or package policy if the principal exposure insured is not medical malpractice.

[Statutory Authority: RCW 48.02.060 and 48.18.547. 06-24-039 (Matter No. R 2006-08), § 284-20A-050, filed 11/30/06, effective 12/31/06; 06-17-054 (Matter No. R 2006-01), § 284-20A-050, filed 8/10/06, effective 9/10/06.]