Chapter 284-87 WAC

JOINT UNDERWRITING ASSOCIATION FOR MIDWIFERY AND BIRTHING CENTERS MALPRACTICE INSURANCE

WAC

284-87-010 Purpose.
284-87-020 Definitions.
284-87-030 The association.
284-87-040 Activation of association.
284-87-050 Administration.
284-87-060 General powers and duties of the board.
284-87-070 Assessments.
284-87-080 Statistics, records, and reports.
284-87-090 Eligibility of licensees for coverage.
284-87-100 Standard policy coverage—Premiums.
284-87-110 Renewal of policies.
284-87-120 Cancellation of policies.
284-87-130 Right of appeal.
284-87-140 Cooperation of producers.
284-87-150 Commissions.
284-87-155 Reserves and surplus.
284-87-160 Additional notice required.
284-87-165 Distribution of assets upon dissolution of the association.
284-87-170 Termination of association.

WAC 284-87-010 Purpose. The purpose of this chapter is to establish a joint underwriting association pursuant to chapter 48.87 RCW, to provide midwifery and birth center malpractice insurance.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-010, filed 12/30/93, effective 1/30/94.]

WAC 284-87-020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Association" means the joint underwriting association established pursuant to the provisions of chapter 48.87 RCW.

"Board" means the governing board of the association.

"Licensee" means any person or birth center facility licensed to provide midwifery services pursuant to chapters 18.46, 18.50, and 18.79 RCW.

"Market assistance plan" or "MAP" means the voluntary consumer assistance plan established pursuant to the provisions of RCW 48.22.050.

"Member insurer" means any insurer that on or after July 25, 1993, possesses a certificate of authority to write medical malpractice, general casualty insurance, or both, within this state.

"Midwifery and birth center 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.

"Service company" means any insurance company or person designated by the association to act on behalf of the association under chapters 48.87 RCW and 284-87 WAC.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-020, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-020, filed 12/30/93, effective 1/30/94.]

WAC 284-87-030 The association. (1) A nonprofit joint underwriting association for midwifery and birthing centers malpractice insurance is hereby established. Membership in the association shall be mandatory for all insurers that on or after July 25, 1993, possess a certificate of authority to write medical malpractice, general casualty insurance, or both, within this state. 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. An insurer ceases to be a member insurer upon surrender of its certificate of authority to transact insurance in this state.

(2) The association shall remain inactive, except for the actions of the board enumerated in WAC 284-87-050 through 284-87-080, until it is activated by the commissioner as provided in WAC 284-87-040.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 95-05-034, § 284-87-030, filed 2/8/95, effective 3/11/95; 94-02-053 (Order R 93-18), § 284-87-030, filed 12/30/93, effective 1/30/94.]

WAC 284-87-040 Activation of association. (1) If the commissioner finds that any licensee is not reasonably able to obtain midwifery or birthing center malpractice insurance with liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or such other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market, the commissioner may notify the association of such finding and direct that its board promptly convene and submit its plan of operation and bylaws to the commissioner for approval. Such plan shall include its evaluation and report relative to the feasibility of a market assistance plan to be conducted by the association as a voluntary program, or a plan to be conducted pursuant to the authority given to the commissioner by RCW 48.22.050. Pursuant to RCW 48.87.030, a MAP shall be used prior to activating a joint underwriting association.

(2) If the use of a MAP is unsuccessful, the commissioner may instruct the board to activate the authority of the association and commence writing midwifery and birthing center malpractice insurance, in accordance with this chapter.

[Statutory Authority: RCW 48.02.060, 48.87.100 and 48.87.050. 94-13-006 (Order R 94-11), § 284-87-040, filed 6/2/94, effective 7/3/94. Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-040, filed 12/30/93, effective 1/30/94.]

WAC 284-87-050 Administration. (1) The association must be administered by a governing board, subject to the supervision of the commissioner, and operated by a service company or companies appointed by the board.

(2) The board must consist of five members. Three board members must be member insurers appointed by the commis-

sioner. The other two board members must be licensees who are appointed by the commissioner to so serve, neither of whom shall have an interest, directly or indirectly, in any insurer except as a policyholder. Two of the original board members must be appointed to serve an initial term of three years, two must be appointed to serve an initial term of two years, and the remaining must be appointed to serve a one-year initial term. All other terms must be for three years or until a successor has been appointed. Not more than one member insurer in a group under the same management or ownership shall serve on the board at the same time. At least one of the three insurers on the board must be a domestic insurer. Members of the board may be removed by the commissioner for cause.

(3) The association must indemnify each person serving on the board or any subcommittee thereof, each member insurer of the association, and each officer and employee of the association 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 willful 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.

(4) The association at the discretion of the board may agree to indemnify its appointed service company or companies and its staff from all costs and expenses actually and necessarily incurred by them in defense of any action, suit, or proceeding in which they are made a party by reason of their being or having been a service company of the association, except in relation to matters as to which they have been judged by a court of competent jurisdiction, to have engaged in willful misconduct in the performance of their duties as a service company on its behalf by staff.

[Statutory Authority: RCW 48.02.060, 48.87.100 and chapter 48.87 RCW. 11-12-067 (Matter No. R 2011-04), § 284-87-050, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-050, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-050, filed 12/30/93, effective 1/30/94.]

WAC 284-87-060 General powers and duties of the board. (1) Within thirty days after the appointment of its members by the commissioner, the board must prepare and adopt a plan of operation and bylaws consistent with this chapter, subject to approval by the commissioner. In a timely manner thereafter, the board must 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 284-87-040. These actions must 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. Four members of the board shall constitute a quorum as long as at least one of those present is a licensee board member.

(3) The board may appoint a service company or companies, 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 the commissioner a written report of operations. All insurer members of the association may receive a copy of the report from the association upon request.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-060, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-060, filed 12/30/93, effective 1/30/94.]

WAC 284-87-070 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 five hundred dollars per member insurer. 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.

(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. Each member insurer shall be assessed a proportionate share based on the sum of "direct premiums earned" in this state on the reporting line for "medical malpractice" and for "other liability" (currently lines 11 and 17, of page 14), on the member insurer's most recent annual statement to the commissioner. Member insurers reporting zero "direct premiums earned" on the member insurer's most recent annual statement to the commissioner, will not be assessed.

(4) Assessments are due thirty days after mailing. Any member insurer failing to remit its assessment when due is subject to revocation of its certificate of authority.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-070, filed 12/30/93, effective 1/30/94.]

WAC 284-87-080 Statistics, records, and reports. (1) The association must maintain 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 policies canceled; and

(d) Claims activity.

(2) In addition to statistics, the association must 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. Information concerning individual licensees must be kept confidential to the extent permitted by law.

(3) Regular reports of the association's operations must be submitted to all members of the board and to the commissioner, the reports must 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 must 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 times and under conditions as the board shall determine.

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

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-080, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-080, filed 12/30/93, effective 1/30/94.]

WAC 284-87-090 Eligibility of licensees for coverage. Any licensee that is unable to obtain midwifery or birthing center insurance with liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or other minimum level of mandated coverage as determined by the department of health, from the voluntary insurance market or from any market assistance plan organized pursuant to RCW 48.22.050, is eligible to apply for coverage through the association. The association's service company or companies 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 48.87 RCW, every licensee will be presumed to be an acceptable insurable risk for the association. To refuse or cancel 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 circumstances justify refusing or canceling coverage to the licensee.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-090, filed 7/8/10, effective 8/8/10. Statutory Authority: RCW 48.02.060, 48.87.100 and 48.87.050. 94-13-006 (Order R 94-11), § 284-87-090, filed 6/2/94, effective 7/3/94. Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-090, filed 12/30/93, effective 1/30/94.]

WAC 284-87-100 Standard policy coverage—Premiums. (1) All policies issued by the association must have liability limits of at least one million dollars per claim and three million dollars per annual aggregate, or other minimum level of mandated coverage as determined by the department of health, and shall be issued for a term of one year.

(2) Premiums must be based on the association's rate filings approved by the commissioner in accordance with chapter 48.19 RCW. The 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) Consistent with the nonprofit character of the association, rates for policies issued by the association must be set so that the expected profit (that is, premiums plus investment income minus the sum of expenses and losses) is zero.

(4) The association is exempt from the requirements of WAC 284-24-065.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-100, filed 7/8/10, effective 8/8/10. Statutory Authority: RCW 48.02.060, 48.87.100 and 48.87.050. 94-13-006 (Order R 94-11), § 284-87-100, filed 6/2/94, effective 7/3/94. Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-100, filed 12/30/93, effective 1/30/94.]

WAC 284-87-110 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 284-87-090 at the end of the expiring policy term.

(2) The association shall notify covered licensees in writing at least ninety 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 written 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 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-110, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-110, filed 12/30/93, effective 1/30/94.]

WAC 284-87-120 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 284-87-090.

(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 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-120, filed 12/30/93, effective 1/30/94.]

WAC 284-87-130 Right of appeal. (1) Any applicant or insured, licensed pursuant to chapter 18.46, 18.50, or 18.88 RCW, shall have a right of appeal to the commissioner, including the right to appear before the commissioner or his

or her designee, if requested by the person seeking appeal, from any decision by the board.

(2) Appeals to the commissioner under this provision shall be handled in accordance with chapters 48.04 and 34.05 RCW.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-130, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-130, filed 12/30/93, effective 1/30/94.]

WAC 284-87-140 Cooperation of producers. All licensed producers must provide full cooperation in carrying out the aims and the operation of the association.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-140, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-140, filed 12/30/93, effective 1/30/94.]

WAC 284-87-150 Commissions. The association shall pay commissions as established by the board on policies issued under this chapter to the licensed producer designated by the applicant.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-150, filed 7/8/10, effective 8/8/10; 94-02-053 (Order R 93-18), § 284-87-150, filed 12/30/93, effective 1/30/94.]

WAC 284-87-155 Reserves and surplus. (1) The board shall determine and establish a minimum loss reserve account to offset infrequent severe losses.

(2) If the board, in its sole discretion, determines that the reserve account is in excess of an amount necessary to pay potential infrequent severe losses, the association may, but is not obligated to:

(a) Refund to the member insurers all or any portion of any assessment that was received from the member insurers in the same pro rata amount the member insurer was assessed and paid. No return to a member insurer may exceed the aggregate amount paid to the association by the member insurer.

(b) After all assessments received by the association from member insurers are refunded to the member insurers, the association may make a one-time premium adjustment to the insured licensees.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-155, filed 7/8/10, effective 8/8/10.]

WAC 284-87-160 Additional notice required. Any notice of cancellation or nonrenewal of midwifery or birthing center 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 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-160, filed 12/30/93, effective 1/30/94.]

WAC 284-87-165 Distribution of assets upon dissolution of the association. If the association is deactivated or dissolved and has a positive asset balance, the excess funds will be distributed in the following order:

(1) For the purchase of prior acts coverage from the successor insurer for all active licensees insured by the association.

(2) For the return of one hundred percent of unearned premium to all active licensees insured by the association.

(3) For the return of remaining funds to the member insurers on a pro rata formula, based upon the total of all assessments paid in throughout the lifetime of the association's operation. Returns to a member insurer must not exceed the aggregate amount paid to the association by the member insurer.

(4) For the distribution of any remaining balance to active licensees insured by the association at the time of deactivation or dissolution, according to a pro rata formula based upon the total of all premiums paid to the association. Distribution amounts paid to a licensee must not exceed the aggregate amount paid to the association by the licensee. Pro rata amounts of less than twenty-five dollars will not be returned.

(5) Any remaining balance will utilized at the discretion of the commissioner.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 10-15-014 (Matter No. R 2010-02), § 284-87-165, filed 7/8/10, effective 8/8/10.]

WAC 284-87-170 Termination of association. The association shall have perpetual existence, subject to repeal or modification of this chapter.

[Statutory Authority: RCW 48.02.060 and 48.87.100. 94-02-053 (Order R 93-18), § 284-87-170, filed 12/30/93, effective 1/30/94.]