
SUBSTITUTE HOUSE BILL 1223

State of Washington

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By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Cody, Lantz, Fromhold, Simpson, P. Sullivan, Morrell, Williams, Dickerson, Linville, Clibborn, Kagi and Ormsby)

READ FIRST TIME 02/03/06.

1 AN ACT Relating to underwriting medical malpractice coverage;
2 amending RCW 48.18.290 and 48.18.2901; adding a new section to chapter
3 48.18 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.18 RCW
6 to read as follows:

7 (1) For the purposes of this section:

8 (a) "Affiliate" has the same meaning as in RCW 48.31B.005(1).

9 (b) "Claim" means a demand for monetary damages by a claimant.

10 (c) "Claimant" means a person, including a decedent's estate, who
11 is seeking or has sought monetary damages for injury or death caused by
12 medical malpractice.

13 (d) "Tier" has the same meaning as in RCW 48.18.545(1)(h).

14 (e) "Underwrite" or "underwriting" means the process of selecting,
15 rejecting, or pricing a risk, and includes each of these activities:

16 (i) Evaluation, selection, and classification of risk, including
17 placing a risk with an affiliate insurer that has higher rates and/or
18 rating plan components that will result in higher premiums;

- 1 (ii) Application of classification plans, rates, rating rules, and
2 rating tiers to an insured risk; and
3 (iii) Determining eligibility for:
4 (A) Insurance coverage provisions;
5 (B) Higher policy limits; or
6 (C) Premium payment plans.

7 (2) During each underwriting process, an insurer may consider the
8 following factors only in combination with other substantive
9 underwriting factors:

10 (a) An insured has inquired about the nature or scope of coverage
11 under a medical malpractice insurance policy;

12 (b) An insured has notified their insurer about an incident that
13 may be covered under the terms of their medical malpractice insurance
14 policy, and that incident does not result in a claim; or

15 (c) A claim made against an insured was closed by the insurer
16 without payment. An insurer may consider the effect of multiple claims
17 if they have a significant effect on the insured's risk profile.

18 (3) If any underwriting activity related to the insured's risk
19 profile results in higher premiums as described under subsection
20 (1)(e)(i) and (ii) of this section or reduced coverage as described
21 under subsection (1)(e)(iii) of this section, the insurer must provide
22 written notice to the insured, in clear and simple language, that
23 describes the significant risk factors which led to the underwriting
24 action. The commissioner must adopt rules that define the components
25 of a risk profile that require notice under this subsection.

26 **Sec. 2.** RCW 48.18.290 and 1997 c 85 s 1 are each amended to read
27 as follows:

28 (1) Cancellation by the insurer of any policy which by its terms is
29 cancellable at the option of the insurer, or of any binder based on
30 such policy which does not contain a clearly stated expiration date,
31 may be effected as to any interest only upon compliance with the
32 following:

33 ~~(a) ((Written notice of such cancellation, accompanied by the~~
34 ~~actual reason therefor, must be actually delivered or mailed to the~~
35 ~~named insured not less than forty five days prior to the effective date~~
36 ~~of the cancellation except for cancellation of insurance policies for~~
37 ~~nonpayment of premiums, which notice shall be not less than ten days~~

1 ~~prior to such date and except for cancellation of fire insurance~~
2 ~~policies under chapter 48.53 RCW, which notice shall not be less than~~
3 ~~five days prior to such date;~~

4 (b)) For all insurance policies other than medical malpractice
5 insurance policies or fire insurance policies canceled under RCW
6 48.53.040:

7 (i) The insurer must deliver or mail written notice of cancellation
8 to the named insured at least forty-five days before the effective date
9 of the cancellation; and

10 (ii) The cancellation notice must include the insurer's actual
11 reason for canceling the policy.

12 (b) For medical malpractice insurance policies:

13 (i) The insurer must deliver or mail written notice of the
14 cancellation to the named insured at least ninety days before the
15 effective date of the cancellation; and

16 (ii) The cancellation notice must include the insurer's actual
17 reason for canceling the policy and describe the significant risk
18 factors that led to the insurer's underwriting action, as defined under
19 section 1(1)(e) of this act.

20 (c) If an insurer cancels a policy described under (a) or (b) of
21 this subsection for nonpayment of premium, the insurer must deliver or
22 mail the cancellation notice to the named insured at least ten days
23 before the effective date of the cancellation.

24 (d) If an insurer cancels a fire insurance policy under RCW
25 48.53.040, the insurer must deliver or mail the cancellation notice to
26 the named insured at least five days before the effective date of the
27 cancellation.

28 (e) Like notice must also be so delivered or mailed to each
29 mortgagee, pledgee, or other person shown by the policy to have an
30 interest in any loss which may occur thereunder. For purposes of this
31 subsection (1)((~~b~~)) (e), "delivered" includes electronic transmittal,
32 facsimile, or personal delivery.

33 (2) The mailing of any such notice shall be effected by depositing
34 it in a sealed envelope, directed to the addressee at his or her last
35 address as known to the insurer or as shown by the insurer's records,
36 with proper prepaid postage affixed, in a letter depository of the
37 United States post office. The insurer shall retain in its records any

1 such item so mailed, together with its envelope, which was returned by
2 the post office upon failure to find, or deliver the mailing to, the
3 addressee.

4 (3) The affidavit of the individual making or supervising such a
5 mailing, shall constitute prima facie evidence of such facts of the
6 mailing as are therein affirmed.

7 (4) The portion of any premium paid to the insurer on account of
8 the policy, unearned because of the cancellation and in amount as
9 computed on the pro rata basis, must be actually paid to the insured or
10 other person entitled thereto as shown by the policy or by any
11 endorsement thereon, or be mailed to the insured or such person as soon
12 as possible, and no later than forty-five days after the date of notice
13 of cancellation to the insured for homeowners', dwelling fire, and
14 private passenger auto. Any such payment may be made by cash, or by
15 check, bank draft, or money order.

16 (5) This section shall not apply to contracts of life or disability
17 insurance without provision for cancellation prior to the date to which
18 premiums have been paid, or to contracts of insurance procured under
19 the provisions of chapter 48.15 RCW.

20 **Sec. 3.** RCW 48.18.2901 and 2002 c 347 s 1 are each amended to read
21 as follows:

22 (1) Each insurer (~~((shall be required to))~~) must renew any (~~(contract~~
23 ~~of))~~) insurance policy subject to RCW 48.18.290 unless one of the
24 following situations exists:

25 (~~((The insurer gives the named insured at least forty five days'~~
26 ~~notice in writing as provided for in RCW 48.18.290, that it proposes to~~
27 ~~refuse to renew the insurance contract upon its expiration date; and~~
28 ~~sets forth in that writing the actual reason for refusing to renew;))~~)

29 (i) For all insurance policies subject to RCW 48.18.290(1)(a):

30 (A) The insurer must deliver or mail written notice of nonrenewal
31 to the named insured at least forty-five days before the expiration
32 date of the policy; and

33 (B) The notice must include the insurer's actual reason for
34 refusing to renew the policy.

35 (ii) For medical malpractice insurance policies subject to RCW
36 48.18.290(1)(b):

1 (A) The insurer must deliver or mail written notice of the
2 nonrenewal to the named insured at least ninety days before the
3 expiration date of the policy; and

4 (B) The notice must include the insurer's actual reason for
5 refusing to renew the policy and describe the significant risk factors
6 that led to the insurer's underwriting action, as defined under section
7 1(1)(e) of this act;

8 (b) At least twenty days prior to its expiration date, the insurer
9 has communicated, either directly or through its agent, its willingness
10 to renew in writing to the named insured and has included in that
11 writing a statement of the amount of the premium or portion thereof
12 required to be paid by the insured to renew the policy, and the insured
13 fails to discharge when due his or her obligation in connection with
14 the payment of such premium or portion thereof;

15 (c) The insured has procured equivalent coverage prior to the
16 expiration of the policy period;

17 (d) The contract is evidenced by a written binder containing a
18 clearly stated expiration date which has expired according to its
19 terms; or

20 (e) The contract clearly states that it is not renewable, and is
21 for a specific line, subclassification, or type of coverage that is not
22 offered on a renewable basis. This subsection (1)(e) does not restrict
23 the authority of the insurance commissioner under this code.

24 (2) Any insurer failing to include in the notice required by
25 subsection (1)(b) of this section the amount of any increased premium
26 resulting from a change of rates and an explanation of any change in
27 the contract provisions shall renew the policy if so required by that
28 subsection according to the rates and contract provisions applicable to
29 the expiring policy. However, renewal based on the rates and contract
30 provisions applicable to the expiring policy shall not prevent the
31 insurer from making changes in the rates and/or contract provisions of
32 the policy once during the term of its renewal after at least twenty
33 days' advance notice of such change has been given to the named
34 insured.

35 (3) Renewal of a policy shall not constitute a waiver or estoppel
36 with respect to grounds for cancellation which existed before the
37 effective date of such renewal, or with respect to cancellation of fire
38 policies under chapter 48.53 RCW.

1 (4) "Renewal" or "to renew" means the issuance and delivery by an
2 insurer of a contract of insurance replacing at the end of the contract
3 period a contract of insurance previously issued and delivered by the
4 same insurer, or the issuance and delivery of a certificate or notice
5 extending the term of a contract beyond its policy period or term.
6 However, (a) any contract of insurance with a policy period or term of
7 six months or less whether or not made continuous for successive terms
8 upon the payment of additional premiums shall for the purpose of RCW
9 48.18.290 and 48.18.293 through 48.18.295 be considered as if written
10 for a policy period or term of six months; and (b) any policy written
11 for a term longer than one year or any policy with no fixed expiration
12 date, shall, for the purpose of RCW 48.18.290 and 48.18.293 through
13 48.18.295, be considered as if written for successive policy periods or
14 terms of one year.

15 (5) A midterm blanket reduction in rate, approved by the
16 commissioner, for medical malpractice insurance shall not be considered
17 a renewal for purposes of this section.

18 NEW SECTION. **Sec. 4.** This act applies to insurance policies
19 issued or renewed on or after January 1, 2007.

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