

NSW Healthcare Liability Act 2001 & Insurance Regulation Order 2006

Reading time:

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Insurance Regulation Order 2006

Part 2 – Decisions concerning individual cover

Division 1

1 Preliminary

1. For the purposes of this Part a refusal to provide approved insurance includes:
 - i. not accepting an offer to enter into a contract for such insurance, or
 - ii. cancelling a contract for such insurance, or
 - iii. not renewing such insurance, or
 - iv. not offering such insurance.

Copy of requirements of this Part to be provided to practitioners

2. An insurer must provide an applicant for approved insurance or an existing policyholder with a copy of the conditions the insurer must comply with under this Part.

Provision of claims history upon request by practitioner

3. An insurer, within ten working days of receiving a written request from a medical practitioner who:
 - a. is covered by approved insurance by the insurer, or
 - b. within the immediately preceding six years has been covered by professional indemnity insurance by the insurer, must provide to the medical practitioner his or her record of claims history for whichever is the lesser of the following periods:
 - i. the most recent six year period of the insurance cover, or
 - ii. the total period that the insurer has provided professional indemnity insurance to the practitioner.

Division 2 – Existing policyholders

2 Decisions concerning individual cover

1. During the period that an adverse decision applies to an existing policy holder, access to risk management activities, which have the purpose of assisting the policyholder to reduce his or her individual claims risk, are to be offered or facilitated by the insurer.

Withdrawal of cover

2. An insurer must not refuse to provide approved insurance to an existing policyholder:
 - a. who has been registered as a medical practitioner for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings, or
 - b. who has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and who has not previously had his or her name removed from the medical register following disciplinary proceedings, or
 - c. in the case of a medical practitioner to whom paragraph (a) or (b) does not apply, unless the medical practitioner has an incident and claims history the insurer considers warrants such a decision.
3. Sub-clause (2) does not apply where an insurer refuses to provide approved insurance:
 - a. for a reason which is of a similar kind to a reason that enables the cancellation of a contract of general insurance, or the avoidance of a claim or policy, in accordance with the relevant provisions of the Insurance Contracts Act, or
 - b. for a reason which relates to a breach or nonobservance by the medical practitioner of the terms and conditions of the relevant insurance policy, or the non-payment of the relevant premium, or
 - c. because the insurer ceases to engage in the business of providing professional indemnity insurance to non-exempt medical practitioners.
4. For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.

3 Proper notice and explanation

1. Subject to clause 4 of this Part, an insurer must not (whether upon renewal or otherwise), because of the incident and claims history of an existing policy holder, make an adverse decision in respect of the approved insurance of the policy holder or a decision to refuse to provide approved insurance to the policy holder, unless the insurer:
 - a. in the case of any adverse decision, has given the policy holder 28 days' written notice prior to the decision taking effect, or
 - b. in the case of a decision to refuse to provide professional indemnity insurance, has given the policyholder two months' written notice prior to the decision taking effect together with a copy of the claims history specified at clause 1 (3) of this Part.
2. Prior to giving such notice under sub-clause (1) (a) the insurer must:
 - a. give the relevant medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer, and
 - b. take into account any matters raised by the medical practitioner in the course of those discussions.
3. If requested by the relevant medical practitioner, the insurer must provide to him or her a written explanation of the reasons for its refusal to provide approved insurance.
4. This clause does not apply where an insurer upon renewal of professional indemnity insurance continues to give effect to an adverse decision made prior to the insurance being renewed.
5. For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category is taken to be a decision to refuse to provide approved insurance.

4 Opportunity for consideration by Medical Board at practitioner's election

1. This clause applies to a refusal to provide approved insurance because of the incident and claims history of an existing policyholder.
2. For the purposes of this clause a decision by an insurer to charge a medical practitioner a premium which is at least twice the premium charged by the insurer to all, or a majority of, medical practitioners of the same premium category, is taken to be a decision to refuse to provide approved insurance.
3. If within 28 days of receiving notice of a decision to refuse to provide approved insurance in respect of an existing policyholder, the policyholder:
 - a. authorises the insurer, in writing, to notify the Medical Board of any matter which forms the basis of the decision and to provide to the Medical Board information and documentation relevant to such matter, and
 - b. authorises the Medical Board, in writing, to provide to the insurer a copy of its advice to the practitioner as to the outcome of any such notification, if made, and in those cases where the Medical Board refers a matter to an Impaired Registrants Panel or for assessment under Part 5A of the Medical Practice Act 1992, copies of any relevant decisions, reports and recommendations arising from the referral, an insurer is to forward the relevant information to the Medical Board.
4. If an insurer is authorised to forward information to the Medical Board under sub-clause (3), an insurer is not to give effect to the decision to refuse to provide professional indemnity insurance pending whichever of the following occurs first:
 - a. the expiration of a period of three months from the date of forwarding the relevant information pursuant to sub-clause (3), or
 - b. receipt and consideration by the insurer of copies of the information referred to under sub-clause (3) (b).
5. If such matters are the subject of a referral to an Impaired Registrants Panel or form the basis of a referral for assessment under Part 5A of the Medical Practice Act 1992, the insurer is to:
 - a. review its decision (whether or not it has already given effect to that decision) following receipt and consideration by the insurer of any reports and recommendations arising from the referral, and of advice on any action taken by the Medical Board consequent upon those reports and recommendations, and
 - b. take reasonable steps to advise the relevant practitioner of the outcome of that review.
6. Nothing in this clause prevents an insurer from charging a premium of an amount that does not constitute a refusal to provide approved insurance under sub-clause (2) pending receipt of the Medical Board's advice or the expiration of three months, whichever first occurs, in accordance with sub-clause (3).

Division 3 – New applicants

5. Decisions concerning individual cover

1. In this clause a refusal of an application for approved insurance includes a decision to not accept an offer to enter into a contract for such insurance.

Newly qualified practitioners

2. An insurer must not make a significant adverse decision in respect of an application for approved insurance from a medical practitioner who has not previously held professional indemnity insurance with that insurer:
 - a. if the applicant has been registered as a medical practitioner for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings, or
 - b. if the applicant has held specialist qualifications recognised under the Health Insurance Act for a period of less than three years and has not previously had his or her name removed from the medical register following disciplinary proceedings.

Refusal of cover

3. Before giving effect to a decision to refuse an application for approved insurance from a medical practitioner an insurer must give the medical practitioner a reasonable opportunity to discuss the proposed decision and the reasons for it with the insurer.

4. If requested by a medical practitioner whose application for approved insurance is refused, the relevant insurer must provide him or her with a written explanation of the reasons for its refusal
