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Bulletin 178

COMMUTATION OF POLICIES USED AS PROOF OF FINANCIAL RESPONSIBILITY FOR THE PATIENT'S COMPENSATION FUND

This Bulletin is directed to all health care providers submitting proof of financial responsibility to the Indiana Patient's Compensation Fund (the "PCF") under IC 34-18-4-1. It has come to the attention of the Department that some health care providers have commuted policies of insurance that were used to prove financial responsibility to the PCF. For purposes of this Bulletin, commutation means a discharge, substitution, or transfer of an insurer's obligations under an insurance policy/contract, often involving a return of some portion of the premium originally paid. Commutation in this sense can also be known as policy buy-back and does not include flat cancellations or mid-term cancellations, or policy recission due to fraud or other violations of the policy terms.

IC 34-18-3-2 requires health care providers to provide proof of financial responsibility and pay the appropriate surcharge to be considered qualified health care providers and enjoy the protections of Indiana's Medical Malpractice Act (the "Act"). However, the Act also provides that the health care provider and the health care provider's insurer are liable to a patient pursuant to the provisions of the Act and enjoy the protections therein only while malpractice liability insurance remains in force.

When an insurance policy is commuted, the parties extinguish all rights and liabilities under the applicable insurance contract. Thus, when a qualified health care provider commutes a policy, malpractice liability insurance is no longer in force, and a qualified health care provider who commutes the policy used as proof of financial responsibility is no longer a qualified health care provider for the policy period commuted.

Any health care provider that has, before the date of this Bulletin, commuted a policy once used as proof of financial responsibility should notify the Department of this commutation on or before May 15, 2010. If notification occurs on or before the deadline, the Commissioner will consider other means of establishing financial responsibility to satisfy the Act for the period commuted. Any health care provider who fails to notify the Department by the deadline shall not be qualified for acts of malpractice falling under the policy of insurance that was commuted. Any health care provider who commutes a policy of insurance used as proof of financial responsibility to the PCF on or after the date of this Bulletin will forfeit PCF coverage for the policy commuted unless the PCF has given written approval prior to the commutation.

In addition, IC 34-18-13-4 provides that an insurer assumes all obligations to pay an award imposed against its insured under the Act. Thus, an insurer that has commuted a policy it cited to the PCF as proof of financial responsibility is still responsible for payment to a victim of medical malpractice if its insured health care provider fails to pay any settlement or judgment against it. Insurers rescinding coverage for any reason are reminded of the provisions of IC 34-18-13-4.

Questions regarding this Bulletin should be directed to Tina Korty, Deputy Commissioner, at (317) 232-2417 or *tkorty@idoi.IN.gov*.

INDIANA DEPARTMENT OF INSURANCE

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