

**TITLE 50: INSURANCE  
PART 2005 PRE-EXISTING ILLNESS  
CHAPTER I: DEPARTMENT OF INSURANCE**

**Section 2005.10 Authority**

This Rule is issued by the Director of Insurance pursuant to Section 401 of the Illinois Insurance Code and it implements especially Sections 143, 359a and 154 of the Illinois Insurance Code by establishing minimum standards for the terms "pre-existing illness" or "pre-existing conditions" as constructed by definition of sickness and the provisions for Time Limit on Certain Defenses used in accident and health insurance policies.

**Section 2005.20 Applicability**

This Rule shall apply to all companies transacting in this State the kinds of business enumerated in Clause (b) of Class 1 and Clause (a) of Class 2 of Section 4 of the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 616) and to all other "persons" as defined in Section 422 of the Code (Ill. Rev. Stat. 1981, ch. 73, par. 1029) who are engaging in accident and health insurance business in this State.

**Section 2005.30 The Minimum Definition of Pre-existing Illness or Pre-existing Condition**

- a) A "pre-existing illness" or "pre-existing condition" as constructed by the definition of sickness and the provisions for Time Limit on Certain Defenses in an accident and health insurance policy issued after the effective date of this Part shall mean any disease, illness, sickness, malady or condition which was:
  - 1) diagnosed or treated by a legally qualified physician prior to the effective date of coverage for the insured with consultation, advice or treatment by a legally qualified physician occurring within 24 months prior to the effective date of coverage for the insured; or
  - 2) diagnosed or treated by a legally qualified physician prior to the effective date of coverage for the insured, but a legally qualified physician demonstrates that there is a reasonable medical question that the disease, illness, sickness, malady or condition involved did continue within 24 months prior to the effective date of coverage for the insured without the necessity of consultation, advice or treatment by a legally qualified physician; or
  - 3) evident because there was a clear, distinct symptom or symptoms of the disease, illness, sickness, malady or condition demonstrable prior to the effective date of coverage for the insured with the occurrence of such symptoms being evident within 12 months prior to the effective date of coverage for the insured and in which, in the opinion of a legally qualified physician, would;
    - A) indicate that the diseases, illness, sickness, malady or condition probably began and manifested itself before the effective date of the coverage for the insured, and
    - B) would cause an ordinarily prudent person to seek diagnosis, care or treatment.
- b) The above definition is the minimum required. Any definition more favorable to the insured may be used. The time limitations in this Section do not apply to the company's underwriting standards such as the investigation of an applicant's health history.

(Source: Amended at 14 Ill. Reg. 19892, effective December 4, 1990)

#### **Section 2005.40 Application of the Definition**

- a) In applying this definition to determine if an insured received consultation, advice or treatment from a physician for a disease, illness, sickness, malady or condition, such consultation, advice or treatment must be clearly indicated in the insured's medical records or from the statements of the insured's legally qualified physician or other relevant evidence.
  
- b)
  - 1) If an application contains conflicting answers, or if an answer is clearly incomplete, the insurer has an obligation to investigate further. For example, if a question about medical history is answered with the name of a physician but there is no statement concerning the condition treated or the reason for the visit, the insurer has an obligation to investigate further, an insurer failing to make such an investigation and then taking appropriate action would be estopped from using a "pre-existing condition" or "pre-existing illness" as a grounds for denying the claim or rescinding the policy for the particular disease, illness, sickness, malady or condition.
  
  - 2) If a particular disease, illness, malady or condition was not diagnosed by a legally qualified physician before the effective date of the coverage for the insured, but symptomatology was evident regardless of consultation, advice or treatment by a legally qualified physician, the disease or condition will not be considered pre-existing if there were interrogatories appropriate to such symptoms on the application for insurance and if the symptoms were disclosed on the application for insurance and the insurer did not make an investigation and take appropriate action.
  
  - 3) If there was no application or the interrogatories on any application were not appropriate to such symptoms, a legally qualified physician must decide if the symptomatology was sufficient prior to the effective date of the policy to make a diagnosis and demonstrate manifestation of the disease, illness, sickness, malady or condition.
  
  - 4) In the administration of the Rule if the Medical Director, similar employee or other physician retained by the insurer who qualifies as a legally qualified physician decides the medical questions of Sections 2005.30(a)(2) or 2005.30(a)(3) then said physician shall notify either the insured or his attending physician or other legally qualified physician of the insured of all of the relevant facts supporting the decision. If the attending physician or other legally qualified physician of the insured offers facts which demonstrate there is good reason that the disease, illness, sickness, malady or condition did not exist prior to the effective date of coverage for the insured, the definition of a pre-existing illness must be construed favorably for the insured.
  
- c) A legally qualified physician is a physician as defined and licensed under the Medical Practices Act (Ill. Rev. Stat. 1981, ch. 111, par. 4401 et seq.).
  
- d) The insurer may rescind a policy only if it can demonstrate the insured has withheld material information or answered material questions incorrectly on an application which would have resulted in the insurer, at the time of original application:
  - 1) denying coverage, or

- 2) restricting the level or coverage as applied for, or
- 3) rating up the premium normally charged for the coverage as applied for.
- e) No answers to questions in an application for insurance such as "Are you in good health?" or "Are you free from disease or impairment?" shall be used alone to rescind the policy unless the false answers to such questions, along with the other evidence, clearly demonstrates justification for rescission of the policy.
- f) After the coverage for the insured has been in effect for two years, the coverage may not be rescinded except for fraud. To establish fraud, the insurer must meet the requirements of Illinois law in this regard.

#### **Section 2005.50 Policy Form Requirements**

All policies which exclude the payment of a claim due to a "Pre-existing Illness" or "Pre-existing Condition" as constructed by terms used in the definition of illness or insuring clause of a policy such as "manifests", "beings", "commences", etc., shall contain a definition of these terms within any policy or contain a provision defining the terms "Pre-existing Illness" or "Pre-existing Conditions" within any policy approved by the Department of Insurance on or after the effective date of this Rule.

#### **Section 2005.60 Effective Date**

- a) This Part shall be effective October 30, 1974.
- b) For all policies which were approved by the Director of Insurance before the effective date of this Part shall, for all such policies issued or delivered in this State after the effective date of this Part, administer the term "pre-existing illness" or other such terms in accordance with the requirements of this Part.

SOURCE: Filed October 16, 1974, effective October 30, 1974; codified at 7 Ill. Reg. 3009; amended at 14 Ill. Reg. 19892, effective December 4, 1990.