

Nursing and Midwifery Board of Australia

REGISTRATION STANDARD: PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

1 June 2016

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Summary

This registration standard sets out the Nursing and Midwifery Board of Australia's (NMBA) minimum requirements for professional indemnity insurance (PII) arrangements for enrolled nurses, registered nurses and midwives. Registrants can be covered by their own PII arrangements or third party PII arrangements.

Does this standard apply to me?

This registration standard applies to all enrolled nurses, registered nurses and midwives.

This standard does not apply to those with non-practising registration or students of nursing or midwifery.

What must I do?

1. When you practise as a nurse and/or a midwife, you must be covered by either your own or third party PII arrangements that meet this standard:
 - a. for all aspects of your practice
 - b. that cover for all locations where you practise
 - c. that provide cover for you whether you are working in the private sector, non-government sector and/or public sector, and
 - d. that provide cover for you whether you are practising full-time, part-time, self-employed, employed, or in an unpaid or volunteer capacity, or any combination of these factors.
2. Your PII cover must include:
 - a. civil liability cover
 - b. appropriate retroactive cover for otherwise uncovered matters arising from prior practice, and
 - c. automatic reinstatement
or
 - d. the equivalent of 2a to 2c above under third party PII arrangements.
3. If you are covered by a third party PII arrangement, it must meet this standard. If you are in any doubt

about whether the third party cover meets this standard, you should always ask what is covered by the third party PII arrangement.

If the third party cover does not meet this standard you must take out additional cover to ensure this standard is met.

4. If any area of your practice is specifically excluded from your PII cover, you must not practise in that area.
5. If your PII arrangements are provided by your employer, and you intend to practise outside your stated employment, you must have individual PII arrangements in place to cover that practice. This may include cover for undertaking:
 - practical components of continuing professional development
 - study involving patient treatment, or
 - volunteer work (unless already separately covered in that capacity, for example, by the volunteering organisation).

Amount of cover

If you are taking out your own professional indemnity insurance you should ensure that you take out adequate and appropriate insurance or professional indemnity cover. Professional indemnity insurers provide these policies. These organisations are best placed to advise you on what level of cover is adequate and appropriate for your practice. In order to enable them to make this judgement, you must provide your insurer or indemnifier with accurate and up-to-date information about the scope and nature of your practice. You need to be able to demonstrate that you disclosed fully your scope of practice and to justify your decisions about PII if asked to do so.

Are there exemptions to this standard?

The National Law requires you to have appropriate professional indemnity insurance arrangements in place when you practise as a nurse and/or a midwife.

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If you are a privately practising midwife providing homebirth services you may be eligible for an exemption from holding PII arrangements for intrapartum care under section 284 of the National Law.

What does this mean for me?

The National Law provides that a registered health practitioner must not practise his/her profession unless appropriate professional indemnity insurance arrangements are in force in relation to the health practitioner's practice of the profession (s129).

When you apply for registration

When you apply for registration you must declare that you will not practise the profession unless you have professional indemnity insurance arrangements in place that meet this standard. This is a requirement under the National Law.

At renewal of registration

You will be required to declare annually at renewal that:

1. during the preceding period of registration, you practised the profession in accordance with the requirements of this registration standard, and
2. you will not practise the profession unless you have professional indemnity insurance arrangements in place that meet this standard.

During the registration period

You must notify the NMBA within 7 days if you no longer have appropriate professional indemnity arrangements in place in relation to your practice that meets the requirements of this standard (section 130 of the National Law).

Your compliance with this standard may be audited from time to time.

When you cease practice

When you decide to cease practice, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from previous practice as a registered health practitioner.

Evidence

The NMBA may, at any time, require you to provide evidence that you have appropriate professional indemnity insurance arrangements in place.

If you hold private insurance in your own name, you must retain documentary evidence of this insurance for at least five years.

If you are covered by a third party insurance arrangement, you are not required to obtain documentary evidence of the insurance policy unless the NMBA requests it, however, there may be circumstances when you will be required to seek the documentation from that third party. If requested by the NMBA, you must provide a certified copy of the certificate of currency or a letter from the third party declaring that you are covered.

What happens if I don't meet this standard?

The National Law establishes possible consequences if you don't meet this standard, including:

- the NMBA can impose a condition or conditions on your registration or can refuse your application for registration or renewal of registration when you don't meet a requirement in an approved registration standard for the profession (sections 82 and 112 of the National Law)
- practising without appropriate PII arrangements, or failing to notify the NMBA within seven days that appropriate PII arrangements are no longer in place, is not an offence, but may be behaviour for which health, conduct or performance action may be taken (sections 129 and 130 of the National Law), and
- registration standards, codes or guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice or conduct for registered nurses and/or midwives (section 41 of the National Law).

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PII arrangements guideline for enrolled nurses, registered nurses and nurse practitioners

The *Professional indemnity insurance arrangements for enrolled nurses, registered nurses and nurse practitioners* guideline provides more explanation about how to meet this standard. Enrolled nurses, registered nurses and nurse practitioners are expected to apply the guideline together with this registration standard.

PII arrangements guideline for registered midwives

The *Guidelines for professional indemnity insurance arrangements for midwives* provide further explanation about how to meet this standard. Midwives are expected to apply the guidelines together with this registration standard.

More information

Health practitioners should be aware that the provision of PII to health professionals is generally governed by the *Medical Indemnity (Prudential Supervision and Products Standards) Act 2003 (Cth)*, with some exceptions.

An insurer providing PII to health professionals must generally be registered with the Australian Prudential Regulation Authority (APRA). Health practitioners who are taking out their own professional indemnity insurance are advised to ensure that:

- their PII provider is registered with APRA as a general insurer or that it is a Lloyd's underwriter. APRA's website contains a list of registered general insurers.
- their professional indemnity insurance is provided through a contract of insurance.

Authority

This registration standard was approved by the Australian Health Workforce Ministerial Council on 27 August 2015.

Registration standards are developed under section 38 of the National Law and are subject to wide-ranging consultation.

Definitions

Automatic reinstatement is a provision in policies which allows for the limit of indemnity (amount insured) to be reinstated for new, unrelated claims, after one or more claims has been paid to the limit of the indemnity.

Civil liability insurance means insurance that covers the costs of liability incurred by the insured arising from civil claims seeking compensation for personal injury, harm or loss incurred, where the claim arises directly from an alleged act, error or omission committed in the conduct of the practitioner's practice or professional business during the policy period. Civil liability cover includes cover for legal expenses incurred in defence or settlement of a civil claim and for damages payable.

Exemption for midwives practising private midwifery means under section 284 of the National Law a midwife who practices private midwifery may be exempt from the requirement for PII arrangements for intrapartum care. Midwives practising private midwifery must refer to the NMBA guidelines on PII arrangements for midwives.

Midwife includes all midwives and any midwife with a scheduled medicines endorsement.

National Law means the Health Practitioner Regulation National Law, as in force in each state and territory.

Nurse includes enrolled nurse, registered nurse, nurse practitioner and any registered nurse with a scheduled medicines endorsement.

Occurrence-based policy means a policy that is in place when the event which is the subject of the claim occurred, even if the policy has not been renewed.

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Practice means any role, whether remunerated or not, in which an individual uses their skills and knowledge as a health practitioner in their profession. For the purpose of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge (working) in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

Professional indemnity insurance (PII) arrangements means arrangements that secure for the practitioner's professional practice, insurance against civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. This type of insurance is available to practitioners and organisations across a range of industries and covers the cost and expenses of defending a legal claim, as well as any damages payable. Some government organisations under policies of the owning government are self-insured for the same range of matters.

Retroactive cover means PII arrangements which cover the insured against claims arising out of or in consequence of activities that were undertaken in the course of the practitioner's professional practice, prior to the date of the commencement of the insurance.

Run-off cover means insurance that protects a practitioner who has ceased a particular practice against claims that arise out of or are a consequence of activities that were undertaken when he/she was conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately.

Third party cover means the cover that an individual holds through a third party's insurance arrangement, such as through an employer, education provider or union.

Review

This registration standard will be reviewed from time to time as required. This will generally be at least every five years.

Last reviewed: 1 June 2016

This standard replaces the previous registration standard dated 10 January 2012.