

## Follow-up by the Riksdag of the duty to enter into a contract in the case of child insurance applications





## Foreword

In February 2012, as part of the Committee on Civil Affairs' follow-up and evaluation activities, the Committee decided to make an overall inventory of the handling by insurance companies of applications for child insurance, as well as practices regarding insurance decisions. The purpose of the evaluation was to give the Committee a basis for its consideration of parliamentary business on the issue and for possible opinions regarding the focus of the follow-up of the Insurance Contracts Act announced by the Government.

The follow-up was carried out on behalf of the Committee by Liv Ham-margren from 1 October and by Joakim Skotheim from 1 November 2012, both Senior Evaluation Officers at the Evaluation and Research Secretariat at the Riksdag Administration's Committee Services Division. The work was carried out in consultation with Susanne Sjöblom, Secretary to the Committee on Civil Affairs. Head of Secretariat Monica Hall also participated. The process was monitored on an ongoing basis by the Committee on Civil Affairs' follow-up group, comprising the following members of the Riksdag: Carina Ohlsson (Social Democratic Party), Jessika Vilhelmsson (Moderate Party) and Carina Herrstedt (Sweden Democrats).

Work with the follow-up began during the spring of 2012 and was concluded in March 2013. The follow-up and evaluation group's report has since been published in the series Reports from the Riksdag (Report 2012/13:RFR10). The report was presented at a public committee hearing on 21 March 2013. This brochure provides a summary of the observations made in connection with the follow-up.

## Duty to enter into a contract in the case of private child insurance applications

All children in Sweden are covered by a general insurance coverage through the social insurance system. Additionally, pre-school and school children are, in the majority of cases, covered by an accident insurance policy taken out by the municipality or the independent pre-school or school. On top of this, private, combined accident and health insurance

policies (child insurance policies) can be taken out, either individually or as a group insurance.

In 2005, the Riksdag adopted a new Insurance Contracts Act (2005:104). The law came into force on 1 January 2006. Under the Insurance Contracts Act, insurance companies are under a duty to enter into a contract in the case of personal insurance applications, including child insurance applications. This means that an insurance company cannot deny somebody the right to take out personal insurance coverage which the company normally provides for the public after receiving the information it needs, unless there are special reasons for doing so with regard to the risk of future insurance cases, the nature of the intended insurance, or some other circumstance. Insurance companies are therefore not permitted to make standardised assessments; individual assessments are to be made of all applicants.

In its bill to the Riksdag proposing a new Insurance Contracts Act, the then Government stated that the point of departure must be that all people should have the opportunity to obtain insurance coverage on good terms. Insurance protection can be especially important, for example, for children with a functional disability. According to the Government bill, the proposed right to insurance would significantly strengthen the position of vulnerable people in relation to the insurance companies.

In recent years, there have been media reports that children who have been prematurely born and with a low birth weight have been denied the right to child insurance. According to the media, some of these children have been assessed to be healthy by doctors and the childcare services at the time of application. This has raised questions about the extent to which insurance companies make individual assessments of applicants as stipulated in the Insurance Contracts Act.

## **Observations**

During the course of the evaluation, the Senior Evaluation Officer has made certain observations which are presented in this section.

## Insurance coverage of children under national and private insurance schemes

Despite the fact that all children in Sweden have a general insurance coverage through the social insurance system, many parents choose to take out a combined, private accident and health insurance for their children. The general protection offered by society may be regarded as insufficient. This means that the possibility of taking out a private insurance is valued as it supplements the general insurance coverage.

## The insurance companies' risk assessments of individual child insurance applications

The insurance companies consider fairness vis-à-vis the collective to be important. This means, according to the companies, that medical guidelines with clear delimitations, which ultimately mean that insurance is denied to certain individuals, are necessary. In cases where an insurance company can show reasonable, actuarial reasons why the risk of insuring a specific person is higher than normal, the company can grant the insurance with an exemption, demand a higher premium than normal or completely deny an insurance application. The insurance companies say that individual assessments are always made since the amendments to the Insurance Contracts Act, and that the companies follow strict guidelines, which means little risk of arbitrary assessments.

According to the Swedish Consumers' Insurance Bureau, the insurance companies should try to obtain individual documents to a greater extent, in order to secure a better basis for their individual assessments, but also in order to be able to provide better justifications of their decisions to deny insurance. Other criticisms that have been voiced against the insurance companies is that they are slow to take into account the most recent medical knowledge, that they still make standardised assessments, that it is unclear what scientific basis they use for their decisions and that decisions to deny insurance coverage are – relatively often – poorly founded.

It cannot be said unequivocally that the insurance companies' risk assessments are conducted in a fully correct manner. Some of the shortcomings regarding communication between the insurance companies and applicants for insurance can presumably be remedied if the companies provided clearer written decisions, with the reasons for their decisions. It is up to the insurance companies to decide the extent to which they choose to obtain, for example, supplementary health information from medical records. It is also possible that the insurance companies would gain from asking for consent to obtain health information to a greater extent than they do today. Decisions not to grant child insurance under the standard terms, which are based on supplementary health information, can help to create a better understanding of why a child has been denied insurance. The Swedish Consumers' Insurance Bureau considers that the insurance companies' justifications for their decisions to deny insurance have improved since the duty to enter into a contract was introduced in 2006.

The impact of the duty to enter into a contract on the proportion of granted child insurance policies

The most interesting question here is whether the introduction of the duty to enter into a contract, which came into force on 1 January 2006, has affected the insurance companies' granting of child insurance.

A questionnaire was sent to some of the major insurance companies offering child insurance in Sweden. The results of this questionnaire were compared with a survey conducted by the Swedish Consumers' Insurance Bureau in 2002, that is, before the duty to enter into a contract started to apply. It appears that the proportion of child insurance applications that are granted under ordinary terms has increased somewhat compared with ten years ago. At the same time, the proportion of insurance applications granted with an exemption clause or higher premium has decreased somewhat. None of the major insurance companies uses higher premiums for its child insurance products when it cannot offer ordinary insurance coverage. It cannot be said with certainty whether the number of insur-

ance applications that are denied without an explicit offer of reconsideration has changed between these years, since it is unclear whether the applications denied during 2002 included applications where possibility for reconsideration was offered after a certain period.

### Application of the exemption to the duty to enter into a contract

In its bill to the Riksdag proposing a new Insurance Contracts Act, the Government anticipated that the insurance companies, in cases that were difficult to insure, would primarily adapt the premium and other conditions, and that they would only deny applications if it was not possible to provide insurance at all for special reasons. In addition, the companies would clearly state the reasons for their decision.

It would appear, thus, that the intention that the insurance companies should only deny an application for insurance in exceptional cases has not fully been fulfilled.

There should be scope for the insurance companies, to a greater extent, to be able to offer child insurance at a higher premium or with an exemption clause where the risk is assessed to be higher, instead of denying applications and merely offering accident insurance. The insurance companies would then be able to act in greater compliance with the intentions of the Insurance Contracts Act.

### Insurance coverage through group insurance

In cases where a person is denied the right to take out an individual insurance, a solution may be to take out a group insurance instead. Group insurances normally provide a poorer content compared with individual insurance policies. One advantage with a group insurance, however, is that the simplified risk assessment means that a health declaration is not normally required. It is usually possible for parents with a group insurance to co-insure their children. A group insurance can, in other words, serve as an alternative to an individual insurance in cases where a child is denied insurance.

The legal situation as regards the application of the duty to enter into a contract

There is no court ruling concerning the application of the duty to enter into a contract. The legislation does not clearly take the side of either of the parties, that is, the insurance companies or the policy holders. One can therefore question the practical impact of the duty to enter into a contract in the case of child insurance. The consequence of this is that there may be said to be a clash of interests between, on the one hand the intentions of the politicians regarding people's right to take out a private insurance under the Insurance Contracts Act and, on the other hand, the demands made by the legislators on the insurance companies in the form of the Insurance Business Act. The Insurance Business Act specifies that the companies are to be run with satisfactory solidity, liquidity and control of insurance risks, investments risks and business risks, so that commitments to, for example, policy holders can be fulfilled.

New insurance solutions have been developed

The insurance market is adapting to the duty to enter into a contract by creating new insurance solutions. Several organisations have launched insurance solutions of their own, or plan to do so, in response to the fact that they have felt that their members have had difficulties in taking out private child insurance policies. This change on the Swedish insurance market can partly be assumed to be linked to the fact that the insurance company Folksam launched a child insurance with a qualification period which provides an possibility for children who would probably have been denied an insurance solution earlier to be granted health insurance.

The obligation to enter into a contract in the future

Some children remain without private insurance coverage, or have reduced coverage, as they fail to fulfil the insurance companies' actuarial risk assessments. A more stringent application of the duty to enter into a contract to child insurance cases could help to reduce this problem.

However, such a change would involve certain risks, for example, that the consumers do not understand that the insurance does not cover illness if the symptoms appeared before the insurance started to apply, or weaker content due to the fact that the insurance companies start to reduce the content of their insurance policies. There may also be a risk of adverse selection, which means that low-risk insurance applicants consider that the insurance has become too expensive and therefore refrain from taking out insurance, while high-risk applicants take out insurance instead. It has been mentioned that the insurance companies should bear in mind the risk that a court would take the side of the policy holder if the insurance companies fail to state and explicitly explain their reasons, for example, for denying an insurance application.

## **Follow-ups and evaluations from the Committee on Civil Affairs**

2008/09:RFR8 Bortförda och kvarhållna barn i internationella förhållanden [Abducted and retained children in international cases]

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The follow-up reports are also available on the Riksdag website ([www.riksdagen.se](http://www.riksdagen.se)) and can be ordered from the Riksdag Printing Office (address: SE-100 12 Stockholm, tel: +46-8-786 58 10, fax: +46-8-786 61 76 or e-mail: [ordermottagningen@riksdagen.se](mailto:ordermottagningen@riksdagen.se)).

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