

AANA



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Supplemental Liability Coverage Now Available for Employed CRNAs

By John Fetcho, CPCU, ARM
Director, AANA Insurance Services

Not a week goes by that AANA Insurance Services doesn't receive phone calls or emails from employed CRNAs wondering if they should purchase their own professional liability insurance to supplement the coverage provided by their employers. The simple answer is "yes."

To that end, we rolled out a new, first-of-its-kind product at the Annual Meeting in August—an occurrence policy that works in conjunction with an employed CRNA's existing policy. The product adds significant levels of protection—unlimited defense costs, a "consent to settle" provision, and the ability to transfer it to a new job—not included in employer-provided insurance.

Until recently, many employed CRNAs took the liability coverage provided by their employers for granted. They had no idea how much coverage was available to them or even what type of policy (claims-made or occurrence) was covering them. Clearly, that has changed. With the implications of the National Practitioner Data Bank (NPDB) and the ever-increasing litigious nature of our society, employed CRNAs are more aware and attuned to the potential limitations of the liability insurance provided by their employers.

In developing the product, we conducted a survey to determine if our members felt there was a need for such a policy and to determine which features would be most beneficial to

them. The results indicated that 75 percent of respondents expressed an interest in purchasing a supplemental policy. This high level of interest, combined with feedback we received, helped us design a policy with features that were deemed most important to the employed CRNA.

Why Should I Have My Own Policy?

There are many reasons why you might want your own policy in addition to the coverage provided by your employer. The most important reason would be to have legal representation when there is a claim made against you. If you are strictly dependent upon your employer for your professional liability insurance coverage, you may have little or no say in the handling of any claim you are involved in. Short of a jury trial (and less than 5 percent of medical malpractice claims make it that far), it will be your employer's insurance company that decides how a claim made against you will be resolved. As you can imagine, your

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President's Message

As his term begins, AANA President Dennis Bless, CRNA, MS, looks forward to the challenges and opportunities ahead.

Federal Government Affairs

Read the latest legislative and regulatory developments of interest to CRNAs in this month's column.

State Government Affairs

It's been a busy year for state governments. This month's column provides a recap of legislative and regulatory issues tracked by the AANA State Government Affairs Division this year.

Practice Matters

This month's section announces the new Scope of Practice Document and explores a common practice question: CRNAs asked to Practice as RNs.

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employer's insurance company has no incentive to defend you in a claim if it can settle the claim for less than the cost of your defense, even if you didn't cause or contribute to the alleged adverse patient outcome.

CRNAs who rely solely on their employer for their professional liability insurance coverage must recognize the potential problems that could result if they are involved in a claim. If a claim was made against you, is there any reason to think that your employer's insurance would consider your interests a priority as it looks to defend and/or settle the claim? If you are involved in a claim, will your employer's insurer advise you of settlement offers before they are made to the patient/plaintiff? The answer to these questions is most likely "no." If you are involved in a claim, your employer's insurance company has no legal obligation to advise you of any settlement offers, nor is there any legal requirement to seek your consent before any claim is paid on your behalf. This means you could be completely unaware of the final disposition of a claim made against you.

Any time an insurance company pays a claim on your behalf, they are required to report the payment to the National Practitioner Data Bank (NPDB). Will you be advised of the final disposition of any claim paid out on your behalf or be aware of what is reported to the NPDB? Will you have the opportunity to provide input about what is reported to the NPDB? Will any consideration be given to the impact a claim paid on your behalf will have on your professional reputation and your career? In our experience, the answer to all of these questions is "no." In many cases, the first time a CRNA learns that a claim has been paid out on his or her behalf is when that CRNA applies for a new job. The CRNA then faces a credibility issue with the potential new employer because he or she failed to report the claim during the credentialing process. In addition, he or she may not even be eligible for insurance coverage depending on the nature of the claim and/or the size of the claim payment.

What about your employer's limits of liability? How much coverage do they have? Are you provided with your own separate limit of liability in the event you have a claim?

In most cases the answer to this question is "no." Often, you will be sharing the policy's limits with every other employee. This means other employees could potentially use up all of the policy's limits of liability before you even get a chance to submit a claim. The likelihood of this is much greater if you work for a physicians group or a non-hospital facility, since they tend to carry lower limits of liability than hospitals.

Have you ever changed employers during your career as a nurse anesthetist? What happens to your insurance when you change employers? What if a claim is made against you for something that took place while you were working for a former employer? Will the previous employer's policy provide coverage for you? There is much less incentive for a former employer's insurance company to be concerned about your interests when you are no longer employed by their client. Should CRNAs who are dependent upon a former employer's insurance coverage become involved in a claim, the potential problems previously mentioned will most certainly become real issues.

What if your former employer has a claims-made policy? (The vast majority of medical malpractice/professional liability insurance pol-

Employed CRNA Policy Highlights

- Covers legal representation to protect You, Your Interests, and Your Reputation
- Unlimited legal defense costs
- Occurrence policy: Claims occurring during the policy period will always be covered no matter when they are reported
- Functions in tandem with employer-provided policy
- Your policy: Take it with you to your next job
- "Consent to settle" provision included
- Affordable
- No deductible—no out-of-pocket expenses if a claim is made against you

icies are written on a claims-made basis.) With a claims-made policy, coverage is only available while the policy remains in force. Once the policy ends, so does the coverage. In order to secure additional time to report claims after a claims-made policy has ended, an extended reporting period endorsement (often called a "tail") must be purchased separately. What guarantee do you have that your former employer(s) with a claims-made policy will purchase a tail when the time comes? In most cases, there is virtually none. If no tail is purchased, there is absolutely no coverage available. Concerns about protecting your interests may be the least of your worries. If you end up having a claim in these circumstances, you would be responsible for the expense of defending the claim as well as paying any settlement amount out of your pocket.

A Policy for Employed CRNAs Designed by Employed CRNAs

With the help of the CRNAs who completed our survey, we designed a policy that addresses the needs of the employed CRNAs. The coverage offered by this policy is intended to supplement the coverage provided by your employer. More importantly though, the policy is designed to look out for your interests, not your employer's. It is your policy with your interests in mind. Should it ever be necessary, this policy will provide legal defense on your behalf with counsel that will advocate only for you. Your employer will have no rights under this policy. This policy is designed to protect **you, your interests, and your professional reputation.**

Another important consideration is that this supplemental policy provides coverage on an occurrence basis rather than on a claims-made basis. Occurrence coverage is simpler and more consumer-friendly than claims-made coverage.

You are probably already familiar with occurrence coverage—even

though you may not be aware of it. If you purchase either homeowners or automobile insurance, the liability coverage provided by those policies is occurrence coverage and not claims-made.

An occurrence policy requires the insurance company to defend and/or pay a claim on a policyholder's behalf for a wrongful act that took place during the policy period. Just like a claims-made policy, the wrongful act in question must have happened during the policy period.

However, unlike a claims-made policy, there is no requirement under an occurrence policy that the claim must also be reported to the insurance company during the policy period. Regardless of when the claim is actually reported, the insurance company is always obligated to defend you as long as the wrongful act occurred while the policy was "in force." Even if a claim is not reported for 20 or more years after it happened, the insurance company must defend you as long as the wrongful act occurred during the policy period.

On the other hand, if a claims-made policyholder wants additional time in which to report claims after the policy has expired, he or she must purchase a tail. And this tail can be expensive. But since the policy we designed for employed CRNAs is written on an occurrence basis, you will never have to worry about buying a tail.

Another important feature of this policy is that it has a "consent to settle" provision. Any time an insurance company makes an indemnity payment to a patient/plaintiff on behalf of a policyholder, the insurance company must report both that payment and the policyholder to the NPDB. Unfortunately, most insurance policies do not require your approval before they settle a claim on your behalf. Even though you may have done nothing wrong, and there was no negligence on your part, the insurance company can make the business decision that it would be less expensive to pay a claimant's demand than defend you and your professional reputation. That is where our policy differs.

We recognize that the ability of an insurance company to settle a claim on your behalf without your consent or approval could have a negative impact on your professional future. That is why the policy we developed requires your consent and approval before any claim can be settled on your behalf.

It is also worth noting that there will be no deductible on this new policy. That means if a claim is ever paid on your behalf, you won't have any out-of-pocket expenses. Even if a claim against you is successfully defended, and no payment is made to a patient/plaintiff, you won't have to worry about paying for any of the legal expenses.

For anyone who might ever consider changing employers, the value of having an occurrence policy should be evident. First of all, with an occurrence policy you never have to worry about buying a tail. Secondly, since it is your policy (and not your employer's) you can take it from job to job. Should you move from an employed setting to a self-employed practice, you can simply cancel the occurrence policy. With no tail to buy, it is easy to turn an occurrence policy on and off.

Avoiding too Much Insurance

For employed CRNAs completing our survey, having additional insurance coverage available to them was not their greatest concern. Having legal representation to protect their interests was. It's a good thing that having additional coverage wasn't the biggest priority, because

having too much liability insurance could actually be a bad thing.

In order to best protect our members, we will be offering this employed CRNA policy with limits of \$100,000 per claim and \$300,000 per policy period. Since employed CRNAs will usually have their employer's limits of liability to rely on, we do not want our members to be targeted just because they also have their own individual policy. If you were a patient/plaintiff, who would you be more inclined to sue—a CRNA with a \$100,000 policy or a CRNA with a \$1,000,000 policy?

For most self-employed CRNAs, the usual and customary limits of liability are \$1,000,000 per claim and \$3,000,000 per policy period. But that is not the case in every state. In Michigan and Texas, the usual and customary limits of liability are \$200,000/\$600,000. In Florida, they are \$250,000/\$750,000. Unless there are very specific extenuating circumstances, we won't sell \$1,000,000/\$3,000,000 policies in these states so the member won't be targeted in claims. We believe the same rationale holds true for employed CRNAs.

Another advantage is gained with the lower limits. As many of the survey respondents told us, they wanted the employed policy to be affordable. Having a policy with limits of \$100,000/\$300,000 helps us accomplish that goal.

Just like policies we provide to self-employed CRNAs, the premiums for the employed CRNA policies will be determined on a state-by-state basis. As an example, if a self-employed CRNA in Iowa wants to purchase a \$1,000,000/\$3,000,000 policy, the cost would be \$4,171. If for some reason that CRNA only wanted limits of \$100,000/\$300,000, the policy would then cost \$1,922. Since the risk to the insurance company is much less for an employed CRNA than it is for a self-employed CRNA, the premium is also less. The premium for a \$100,000/\$300,000 policy for an employed CRNA in Iowa is \$647. This gives an employed CRNA a lot of policy for a little bit of money.

The employed CRNA policy will be available in all states and the District of Columbia with the exception of: Connecticut, Kansas, and Wisconsin. The premium for this policy will be less than \$1,000 in most states.

Unlimited Legal Defense Costs

One of the most important features of this policy is that defense costs are provided in addition to your policy limits. Defense costs include investigation costs, attorney's fees, expert witness fees, etc. That means any expenses incurred by the insurance company in defending you (whether a claim is paid out or not) will have no impact whatsoever on your limits of liability.

For example, using the \$100,000 per occurrence limit described earlier, if the insurance company paid out \$75,000 to defend you against a claim/suit, that \$75,000 would not reduce your \$100,000 limit of liability. The only thing that would reduce your limits of liability would be if the insurance company pays a claim out on your behalf to a patient/plaintiff.

What makes this policy even more unique is that the defense coverage provided to defend you is virtually unlimited; there is no defined cap or limitation on defense costs. Since defense costs do not reduce your limits of liability under this policy, the insurance com-

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pany could spend \$250,000 (or more) in defending you for a claim, and you would still have \$100,000 in limits left if no claim is paid out on your behalf.

For most employed healthcare providers, this is the reason for purchasing their own supplemental policy. It's not because they ever expect a claim to be paid out against them, but because they want to make sure they will have a lawyer to represent their best interests and that any legal expenses incurred will be covered.

The likelihood of a claim being paid out against a healthcare provider is relatively low. On average, claims made against healthcare providers are dismissed or closed without any payment being made approximately 70 percent of the time. However, there are defense and legal costs 100 percent of the time. For this reason, you want to have insurance and, specifically, your own policy.

Having legal representation without the worry of the related costs were two of the most important requirements listed by the CRNAs who completed our survey. We certainly think this policy feature meets those needs.

Additional Benefits

The employed CRNAs who completed our survey expressed interest in having coverage for out-of-pocket expenses that are not usually covered by their employer's policy.

Based on this feedback, this new employed CRNA policy contains the following coverage extensions:

- **Administrative/Disciplinary Hearings**—Your employer's policy will rarely provide coverage for any legal expenses you might incur regarding a license complaint or administrative review by a regulatory authority, such as the board of nursing. It is important to note that, should any insurance company pay a claim out on your behalf, they are required to report that payment to the NPDB. In addition to the NPDB, insurance companies are also required to report the claim settlement to the board of nursing in the state in which the claim was filed. This coverage will pay for attorney fees for investigation and defense as well as travel, food, lodging, and wage loss if necessary.
- **Deposition Representation**—Should you be required to give a deposition for a claim you are not a party to, it is highly unlikely that your employer's policy will provide coverage for your own attorney to represent your interests in this matter. This coverage will pay for your legal preparation for a deposition when you receive a subpoena for documents or testimony arising out of professional services.
- **Information Privacy (HIPAA)**—This coverage extension will pay HIPAA fines and penalties pursuant to the Health Insurance Portability and Accountability Act (HIPAA) that you become legally obligated to pay arising from a HIPAA proceeding with respect to the management and transmission of confidential health information. This coverage extension will also reimburse you for notification costs related to the disclosure of confidential personal information. In addition, legal fees and all other reasonable and necessary fees, costs, and expenses will be covered. Please note, HIPAA fines and penalties do not include fines and penalties imposed for a knowingly wrongful disclosure of individually identifiable health information.
- **Defendant Expense**—This coverage extension will reimburse you for expenses such as travel, food, lodging, and wage loss when you are required to attend a trial, hearing, or proceeding.

AANA Insurance Services

With the help of the CRNAs who completed our survey, we believe we have designed and developed a policy that will address the liability issues and concerns of the employed CRNA. If you purchase an employed policy, you are the owner of the policy; you are the Named Insured. That means you have control, and your representation is not left to a disinterested insurance company. This policy will provide employed CRNAs with security and peace of mind knowing that their interests and professional reputation will not be compromised in order to settle a claim. In addition, the policy is very affordably priced. It can be of value to every employed CRNA.

To apply for coverage or to get more information, please go to the Insurance Section of the AANA website (www.aana.com) or call our office at 800-343-1368. We welcome the opportunity to be of service. ■



2013 ANNUAL MEETING

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