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AANA Insurance Services Offering Immediate Claims-Made to Occurrence Conversion Policy

The goal of AANA Insurance Services has always been to develop and provide innovative insurance products to meet the ever-changing professional liability insurance needs of the membership while promoting the further expansion of the nurse anesthesia profession. To that end, AANA Insurance Services introduced a "convertible" claims-made to occurrence policy just over a year ago. The purpose of this policy was to allow CRNAs with a claims-made policy to convert those policies to occurrence policies over a three-year period without having to pay the additional cost of an expensive "tail" (extended reporting period endorsement) at the end of their claims-made coverage.

The original conversion process on this newly-introduced policy was fairly straightforward: Once the CRNA purchased the convertible claims-made to occurrence policy, he or she only needed to keep it in force for three years. If the CRNA maintained a claim-free record for those three years, the claims-made policy would convert to an occurrence policy. To complete the conversion process, the CRNA would be provided with a tail on his or her expiring claims-made policy at no charge at the start of the fourth year of coverage. Now the conversion process is even better and simpler.

In its ongoing effort to provide the members with the best insurance products available, AANA Insurance Services has worked with the insurance companies it represents to provide CRNAs with the option of **immediately** converting their claims-made policies to occurrence policies and receiving free prior acts coverage. Since the three-year wait has been eliminated, CRNAs with claims-made policies can immediately convert to occurrence policies when their policies renew and not have to buy a tail. (If you are currently insured under the three-year convertible policy from AANA Insurance Services, you will not have to wait three years to convert. You will have the opportunity to convert immediately).

While AANA Insurances Services broke new ground last year with the introduction of the three-year, claims-made to occurrence conversion policy, the opportunity for CRNAs to immediately convert from claims-made to occurrence without having to buy a tail is unprecedented. The opportunity to convert from claims-made to occurrence coverage immediately and be provided with free prior

Continues on page 6

President's Message

In this month's message AANA President Paul Santoro, CRNA, MS, updates the membership on issues related to wellness, infrastructure, leadership, and governance.

Clinical Rounds

Read about the latest developments in anesthesia, healthcare, and patient safety in this month's Clinical Rounds.

Federal Government Affairs

This month's Federal Government Affairs previews the Mid-Year Assembly and updates members on legislative and regulatory issues pertinent to nurse anesthesia.

Peer Assistance News

Read about the important role played by the AANA's Peer Assistance Advisors in this month's column.

➠Continued from page 1

acts coverage (meaning there's no need to buy a tail and the cost of that tail is eliminated) is virtually unheard of in the professional liability insurance marketplace. To that point, this opportunity won't last forever. This conversion option will only be available for the next year. And it's only available through AANA Insurance Services. Please note: In order to be eligible for the new conversion policy, you will need to meet the insurance company's underwriting guidelines.

This claims-made to occurrence conversion option is available to all CRNAs with claims-made policies. This includes individual CRNAs, CRNA groups, and even CRNAs who are part of physician groups or are hospital employees. Even if you don't purchase your own professional liability insurance, you will probably want to make your employer aware of this new product. In most cases, your employer's policy is providing you with coverage on a claims-made basis. Unless you've specifically addressed it by contract, there's no guarantee that your employer will buy a tail on your behalf when you leave their employ or that your employer will buy a tail when the business ceases. In either case, you would be left without coverage for the time you worked for that employer. By taking advantage of this new conversion option, your employer has the opportunity to save a substantial amount of money, and you will have the peace of mind in knowing that you'll always have coverage for the time you worked for that employer.

Reasons to Convert

Many CRNAs took advantage of the three-year convertible policy when it was first introduced last year, and the reason for the convertible policy's appeal remains the same today: to save money—sometimes a lot of money. And now, you don't have to wait to save that money.

The charge made by ***admitted**** insurance companies (like the companies represented by AANA Insurance Services) for an *unlimited* tail is normally 100 percent of the policyholder's premium. As an example, if a CRNA's policy premium is $4,500, it would cost that CRNA $4,500 to purchase an *unlimited* tail from his or her ***admitted*** insurance company policy.

So by taking advantage of this convertible option, the CRNA described above would be saving $4,500. And not only would the CRNA be saving a substantial amount of money, he or she would now also be covered by the simpler, more consumer-friendly occurrence form policy. For that reason, the advantages of occurrence coverage should be identified as well.

Understanding Occurrence Coverage

You are probably already familiar with occurrence coverage—even though you may not be aware of it. If you purchase either homeowner's 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 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 the occurrence policyholder as long as the wrongful act occurred during the occurrence 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 an extended reporting period endorsement (also called a "tail"). And the cost of this tail can be expensive.

With occurrence coverage, the insurance company must defend the policyholder as long as the wrongful act occurred during the policy period, even if a claim is not reported for 10 or more years after it happened. Since the occurrence insurance company is obligated to defend the policyholder for an *unlimited* period of time after the policy has expired, the policyholder never has to worry about buying a tail.

Occurrence Coverage Advantages

Generally speaking, an occurrence policy functions more simply than a claims-made policy. As an example, the premium for an occurrence policy usually remains the same every year (in the absence of any rate increase or changes in the policyholder's underwriting characteristics), while the premiums for a claims-made policy increase for four years after the initial year of coverage before leveling off.

In addition, once an occurrence policy expires (or is cancelled or non-renewed), there is nothing else the policyholder needs to do; coverage remains in force indefinitely. If a claim results from something that occurred during the policy period, the occurrence policyholder will always be protected regardless of when the claim is reported. However, when a claims-made policy expires (or is cancelled or non-renewed), the policyholder must decide if he or she is going to purchase a tail. Essentially, the tail provides the policyholder with additional time to report claims for incidents that occurred during the claims-made policy period. Without the purchase of a tail after a claims-made policy expires (or has been cancelled or non-renewed), there will be no coverage available to the policyholder.

Simplicity aside, occurrence coverage has a distinct advantage when it comes to limits of liability. Professional liability insurance policies are usually issued for a 12-month period. When an occurrence policy is issued or renewed, it is considered a separate policy from any other occurrence policy issued before or after it. If a CRNA has occurrence policies in force from Jan. 1, 2011 through Jan. 1, 2016, he or she will have five separate occurrence policies. As is the norm, things aren't quite as simple with claims-made policies.

Unlike occurrence policies, claims-made policies provide coverage on a continuous basis. If a CRNA has claims-made coverage in force from Jan. 1, 2011, through Jan. 1, 2016, he or she will be considered to have had only one claims-made policy in force for that five-year period.

Since claims-made coverage is considered

*Generally speaking, there are two kinds of insurance companies: ***admitted*** and ***non-admitted***. To be considered ***admitted***, an insurance company must have its rates (the premiums that it charges) and its policy form (the coverages it provides) approved by the department of insurance in the states where it plans to do business. Once approved, that company is considered ***admitted*** and can sell only the policy form it was approved to sell. Once approved, the ***admitted*** company cannot charge a higher premium than was approved, nor can it restrict or reduce the coverage of the policy it was approved to sell. To some degree, this can limit some of the applicants an ***admitted*** insurance company may be willing to insure.

continuous, there is only one policy: the current policy. And because there is only one policy, there is only one set of limits available. Assume that the claims-made policyholder has limits of $1 million/$3 million. As a point of reference, the first number ($1 million) represents the most the claims-made policy will pay out for any one claim. The second number ($3 million) represents the most the claims-made policy will pay out in total (or aggregate) for all claims during the policy period. So even if a CRNA has had claims-made coverage in force for five years (which means the current policy is providing coverage for a five-year period), the most the claims-made policy is going to pay out for any and all claims that are reported for the five-year coverage period is $3 million.

However, if a policyholder had occurrence coverage over that same five-year period, he or she would have limits of $1 million/$3 million available for each year of those five years since each one of those occurrence policies was a separate policy. Just as with the claims-made policy, the most an occurrence policy would pay out for any one claim would be $1 million. But since the policyholder had five separate occurrence policies, each one of those policies would provide a separate set of aggregate limits of $3 million for its respective policy period. That means the policyholder would have an aggregate of $15 million ($3 million x 5) in limits available to pay for multiple claims over that same five-year period.

Premium Savings for Converting

As indicated earlier, premiums for occurrence and claims-made policies are charged much differently. While premiums for occurrence policies are generally the same every year, premiums for claims-made policies stair-step up over a five-year period before they level off.

Premiums for claims-made policies start out lower than those for occurrence policies. In most cases, the premium for an occurrence policy is just slightly higher than the fifth-year premium of a claims-made policy. If a fifth-year premium of a claims-made policy is $4,500, the premium of an equivalent occurrence policy would average $4,658 (depending upon which one of the insurance companies represented by AANA Insurance Services you choose; one is a bit higher and one is a bit lower).

If a claims-made policy's first-year premium is $2,475, the premiums for the four successive years would be $3,600; $4,275; $4,455; and $4,500. After that fifth year, the claims-made premium would remain level at $4,500 (in the absence of any rate increase or any change in the policyholder's underwriting characteristics).

In order for an ***admitted*** claims-made policy to have the same *unlimited* time to report claims as an ***admitted*** occurrence policy (to be considered "equal" on an apples-to-apples basis from a coverage standpoint), a tail must be purchased when the claims-made policy expires or is cancelled or non-renewed. The cost of a tail is generally 100 percent of the expiring claims-made policy premium. As an example, if the tail is purchased after the fifth year of coverage and the expiring fifth-year policy premium is $4,500, the cost of the tail would also be $4,500.

Using the example premiums from above, if a CRNA was starting the fifth year of a claims-made policy (or had a claims-made policy in force for five or more years), his or her claims-made premium would be $4,500. However, if that CRNA decided to take advantage of the claims-made to occurrence conversion option, his or her conversion premium would be approximately $4,658 (or $158 more than the claims-made premium.) But since the conversion option eliminates the need to purchase a tail, the CRNA will be saving the cost of the tail, or $4,500. That means the CRNA's true total savings would be approximately $4,342 (4,500 – 158 or 4,500 + 4,500 – 4,658).

For a CRNA starting a fourth-year claims-made policy, the additional cost of the conversion policy over the claims-made policy would be $203 (4,658 – 4,455), but by eliminating the need to pay $4,455 for a tail, the CRNA would still be saving $4,252 (4,455 -203 or 4,455 + 4,455 – 4,658).

Using this same calculation, the savings for third- and second-year policyholders who take advantage of this conversion option would be $3,892 (4,275 + 4,275 – 4,658) and $2,542 (3,600 + 3,600 – 4,658) respectively.

Conversion aside, consider someone who is purchasing professional liability insurance for the first time. While claims-made coverage may seem the cheaper way to go initially ($2,475 vs. $4,658), once you add in the cost of the tail ($2,475) in order to make the claims-made policy equivalent to the occurrence policy, the claims-made policy actually costs $292 more (2,475 + 2,475 – 4,658). Even if you consider total costs over a five-year period, the true cost of a claims-made policy ($23,805, or 2,475 + 3,600 + 4,275 + 4,455 + 4,500 + 4,500) is more than that of an occurrence policy ($23,290, or 4,658 x 5). When you recognize the cost of the tail in the calculation (which is necessary to make an accurate comparison), occurrence coverage is always more cost-effective over time.

Help For Non-Admitted Policyholders

AANA Insurance Services has worked diligently to select insurance companies that are financially sound and can provide quality insurance products to AANA members on a national basis. To that end, both of the companies AANA Insurance Services represents provide coverage to our members on an ***admitted*** basis (and of course, this includes the new claims-made to occurrence conversion policy).

Unfortunately, not all insurance agents are so concerned about their clients' best interests. Some insurance agents will surreptitiously offer ***non-admitted**** coverage in lieu of ***admitted*** just so they can make a sale. (And in most cases, this coverage is being offered illegally.) Many times the initial cost of a ***non-admitted*** policy can be less than that of an ***admitted*** policy. However, given the significant coverage differences between ***admitted*** and ***non-admitted*** policies, a ***non-admitted*** policy should only be purchased when the policyholder has been declined for coverage by an ***admitted*** insurance company.

For CRNAs who are currently insured by a ***non-admitted*** company (and really

Continues on page 8 ➠

Continued from page 7

shouldn't be because they don't have any underwriting issues like claims, substance abuse, or licensure issues), the new claims-made to occurrence conversion policy provides a rare and beneficial opportunity.

As indicated earlier, a CRNA with an ***admitted*** claims-made policy can expect to pay 100 percent of his or her policy premium for an *unlimited* tail. However, ***non-admitted*** insurance companies normally charge a minimum of 125 percent for a tail (and in some case it can be as much as 250 percent). And no matter how much the CRNA pays, the tail from a ***non-admitted*** insurance company is almost always a *limited* tail. That means the CRNA will only have a *limited* time to report claims on that ***non-admitted*** policy. As an example, it's not unusual for a CRNA with a ***non-admitted*** policy to have to pay 125 percent of the policy premium for a tail that only provides a one-year reporting period. When you recognize that the conversion option will not only provide you with an *unlimited* reporting option, but will also do so at no cost, you can see why the value of this new conversion policy to a ***non-admitted*** policyholder is immeasurable. But that's not the only advantage for ***non-admitted*** policyholders who convert.

The coverage provided by a ***non-admitted*** insurance policy is generally inferior to that provided by an ***admitted*** insurance policy. ***Non-admitted*** policies often contain restrictions and exclusions not found in ***admitted*** policies. For CRNAs currently insured by ***non-admitted*** insurance companies who take advantage of the conversion option, it will be like they were never insured by the ***non-admitted*** insurance company. This is because their new ***admitted*** occurrence policy will be providing a free *unlimited* reporting period for the time they were insured by their ***non-admitted*** insurance company.

If you are purchasing professional liability insurance, it's imperative that you make an informed decision on this subject. For more information about the differences between ***admitted*** and ***non-admitted*** insurance companies, see the articles entitled "Choosing the Right Liability Company" and "Buyer Beware: What You Don't Know About Professional Liability Insurance Can Hurt You" which appeared respectively in the December 2010 and March 2007 issues of the *AANA NewsBulletin*. These articles are also available in the Insurance section of the AANA website (www.aana.com) under the "News" heading.

Availability

Since the insurance companies represented by AANA Insurance Services are ***admitted*** insurance companies, they must have their policy forms and the rates they charge approved by the departments of insurance in each state in which they do business. The timing of these approvals differs state-by-state and differs by the two companies represented by AANA Insurance Services. Some states have approved both companies; some states have approved only one or neither of the companies. However, between the two companies we represent, the claims-made to occurrence conversion policy is available (at press time) in all states except Indiana, Florida, Kansas, Louisiana, Nebraska, and New York. An up-to-date list of approved states is maintained in the Insurance section of the AANA website (www.aana.com) under the "News" heading.

AANA Insurance Services

In case you weren't aware, AANA Insurance Services is wholly-owned by the AANA. Access to coverage provided by AANA Insurance Services is a benefit of AANA membership.

Revenues generated by AANA Insurance Services go to support AANA activities that would otherwise be unavailable to the membership or would require other sources of funding. When you purchase your professional liability insurance through AANA Insurance Services, you are supporting the AANA and its activities.

Please call AANA Insurance Services with your insurance questions. We welcome the opportunity to be of service and to tell you about the products and coverages designed especially for CRNAs. Our phone number is (800) 343-1368.■