

# AANA



## NewsBulletin

DECEMBER 2010 • Volume 64, No. 12

## Choosing the Right Liability Insurance Company

John Fetcho, CPCU, ARM  
Director of AANA Insurance Services

Choosing an insurance company is an important decision. This is especially true for healthcare providers like CRNAs. Why? Unlike other insurance claims (fire damage to a home, an auto accident, etc.), medical malpractice claims take much longer to be identified, negotiated, and settled. If you have a property or auto insurance claim, you and your insurance company generally know about it fairly quickly, and the claim can be reported and settled in a timely fashion. That's rarely the case with medical malpractice claims.

According to insurance industry statistics, the lifespan of the average medical malpractice claim is more than five years. Statistics also indicate that only one-third of all medical malpractice claims are reported to the insurance company within 12 months of the event. Therefore, how can you be certain that the insurance policy you buy today will provide coverage to protect and defend you (and pay any judgments you may become liable for) should you need it years from now?

Obviously there are many things to consider. But the decision certainly shouldn't be based on price alone. On occasion, a CRNA will bring us news about a new insurance company that's offering a policy at a price that seems too good to be true. In virtually every situation we review it turns out that the price is indeed too good to be true. Once the CRNA has the opportunity to learn about the policy



in detail and read the "fine print," he or she finds out the only good thing about the policy is the price; everything else is bad news.

Selecting the wrong insurance company could have devastating financial consequences. As such, it is critical that you make an informed decision when selecting an insurance company. It's important to know what you're buying and from whom. Unless you're purchasing your professional liability insurance from AANA Insurance Services, here are some questions you should ask your agent before you purchase any professional liability policy:

1. **Is the policy from an *admitted* or *non-admitted* insurance company?** As dictated by statutes in virtually every state, *non-admitted* policies are only supposed to be offered to CRNAs who have been declined by an *admitted* insurance company that is actively insuring CRNAs. In most cases, these declinations would be limited to those CRNAs who have adverse underwriting issues (such as

Continues on page 4

## Clinical Rounds

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

## Inside the Association

This month's Inside the Association section includes news about the recent hiring of the AANA Deputy Executive Director, a call for comments from the NBCRNA, updates on medication safety and the Joint Commission, notices regarding deadlines and upcoming events, and more.

## Federal Government Affairs

Read about how the AANA is working to address CRNA legislative and regulatory priorities, including reversing Part B Medicare cuts, in this month's Federal Government Affairs section.

## Wellness Milestones

The holiday season can bring stress along with joy into our already busy lives. This month's column has advice on how to cope and keep the holidays happy.

claims that resulted as a breach in standard of care, substance abuse issues, licensure problems, etc.). Since the vast majority of CRNAs don't have these issues, very few CRNAs should ever be offered a policy from a *non-admitted* insurance company.

Because *non-admitted* policies are designed for "high-risk" applicants, the coverage provided by *non-admitted* policies is usually limited and very restrictive. *Non-admitted* coverage is usually not as broad as *admitted* coverage.

Please understand though, *non-admitted* insurance companies do have their place. In fact, AANA Insurance Services works with *non-admitted* insurance companies, but only in those situations where a CRNA has been declined for coverage by an *admitted* insurance company. A *non-admitted* insurance policy should only be considered as a last option. That being said, if an insurance agent offers you a *non-admitted* policy without first offering you a policy through an *admitted* insurance company, you can be sure they're not looking out for your best interest; they're only looking out for theirs.

For more in-depth information about the differences between *admitted* and *non-admitted* insurance companies, please see the article "Buyer Beware: What You Don't Know About Professional Liability Insurance Can Hurt You." This article appeared in the March 2007 issue of the AANA *NewsBulletin* and is available in the Insurance section of the AANA website under "News."

- 2. If the insurance company "goes under," what protection will I have?** If you are insured by a *non-admitted* insurance company, the answer is "none." Every state has a guaranty fund that protects policyholders if their insurance company goes bankrupt. However, this fund only applies to *admitted* insurance companies. If you have a claim, and your *non-admitted* insurance company goes bankrupt, you will have to pay any legal expenses and/or judgments out of your own pocket. This is another reason to avoid *non-admitted* policies if at all possible.
- 3. Are both claims-made and occurrence coverage options available to me?** You should consider not only claims-made coverage, but occurrence coverage as well. Most people consider occurrence coverage to be simpler and easier to understand. As a matter of fact, because there's no time limit on reporting claims under an occurrence policy, occurrence coverage virtually eliminates any claim reporting problems associated with the lengthy lifespan of medical malpractice claims.

Most liability policies (in general) are occurrence policies. If you have a homeowner's policy or a policy to cover your automobile(s), the liability coverage on those policies is provided on an occurrence basis. This is because occurrence is more consumer friendly. If that wasn't the case, the liability coverage on your homeowner's and auto policies would be claims-made. If you

have a choice, why wouldn't you want to consider occurrence coverage?

AANA Insurance Services is one of the only insurance agents that has occurrence coverage available for CRNAs. Not only does AANA Insurance Services offer both claims-made and occurrence policies, it also offers policies that allow you to convert your claims-made policy to an occurrence policy without having to purchase a "tail." No one else is currently offering that sort of policy to CRNAs.

- 4. If I purchase a claims-made policy, will I have to the option of purchasing an unlimited tail?** In order to have additional time in which to report a claim after a claims-made policy has ended, you have to purchase a tail (on some policies the tail is built-in). The important factor regarding the tail is the amount of time it provides for the reporting of claims. The tails offered through AANA Insurance Services provide an unlimited period of time in which to report a claim. This means that the policyholder never has to worry about reporting a claim. (With the addition of an unlimited tail, a claims-made policy virtually becomes an occurrence policy; there is no time limit on when claims have to be reported.) The same cannot be said about many other policies being offered to CRNAs, especially those being provided by *non-admitted* insurance companies.

In many cases, the tails on the other policies being offered to CRNAs (whether the tails are being sold after the policy expires or they are built into the policy) don't provide an unlimited time period to report claims; most often they only provide a year or two of coverage. For many CRNAs, this will not be enough time.

While the statute of limitations can certainly help reduce the number of claims made against CRNAs, they cannot be counted upon in every situation. In some states, the statute of limitations doesn't begin to run until the date of "discovery." As an example, the discovery could relate to a botched surgery. It goes without saying that CRNAs are often sued in cases where anesthesia neither caused nor contributed to the patient's adverse outcome. While the CRNAs are often (but not always) dismissed from these cases, someone still has to pay for the expenses related to the CRNA's defense. If the claim is made after the CRNA's tail has expired, the CRNA policyholder has to pay these costs out of his or her own pocket, not the insurance company.

Also at risk are CRNAs who have patients that are minors. In many states, the statute of limitations doesn't begin to run until after a minor reaches the age of maturity. And it's well known that plaintiffs' attorneys wait until the last minute to file claims to take advantage of the time value of money.

Obviously, a tail that provides less than an unlimited period of time to report a claim presents serious disadvantages to the poli-

cyholder. Now, what if the insurance company takes even further steps to minimize the number of claims that can be reported in that one- or two-year period?

5. **How is a “claim” defined under the insurance policy?** The insurance companies represented by AANA Insurance Services have a very liberal definition of a claim. Virtually any communication from the policyholder about a claim or potential claim/incident (that’s where the policyholder is making the insurance company aware of a bad outcome that might lead to a claim) to either us or the insurance company constitutes a report of a claim and triggers coverage. Unfortunately, that’s not the case for many other insurance companies.

Many other insurance companies (particularly *non-admitted* insurance companies) will usually only consider that there’s been a claim when the policyholder is actually sued and/or served with a lawsuit. In either case, there must be a demand for money. Is this definition a problem? It is only a problem if the tail on your claims-made policy doesn’t provide you with an unlimited reporting period.

If you have a policy that limits the time in which you can report a claim, the last thing you want is something that restricts your ability to actually report a claim within that limited timeframe. That’s exactly what this sort of claim definition does; it increases the likelihood that the insurance company will never have to pay a claim on your behalf because it won’t accept a claim from you until you’ve actually been sued. That doesn’t always happen within one or two years of the event (in which the patient and/or his or her family claim there was an adverse outcome).

6. **Does the policy have a deductible?** Unlike the policies offered through AANA Insurance Services, policies provided by many other insurance companies often have a deductible. That means if you ever have a claim, you are going to have some out-of-pocket expenses. Even if there is no indemnity payment made to a third party (the claimant/plaintiff) in the end, there will be legal expenses, and you will have to share in those expenses if you have a policy with a deductible.

It’s also important to note that this deductible will be charged each and every time there is a claim. The minimum deductible on these policies is usually \$1,000, and it is often as much as \$2,500 or more on *non-admitted* policies. The potential costs related to the deductible should be considered when calculating the true cost of any insurance policy.

7. **Are there any fees or taxes associated with the policy I’m buying?** If you are buying a policy from an *admitted* insurance company, there are rarely ever any fees or taxes. If you’re buying a policy from a *non-admitted* insurance company however, that’s a different story.

Most states require that certain fees and taxes be paid as part of the transaction on a policy purchased from a *non-admitted* insurance company. These fees and taxes are paid by the policyholder and are in addition to the premium that is paid to the *non-admitted* insurer.

The fees and taxes can increase the total cost you pay for the policy by 2 percent to 8 percent. If you cancel a *non-admitted* policy before the end of its term, the unearned portion of these fees and taxes may not be refundable. That may also be true of part of, or your entire, *non-admitted* policy premium. That’s never the case with *admitted* policy premiums.

The amount of the fees and taxes should be itemized and clearly explained. You should know exactly what you are paying for; this will help avoid paying for any hidden charges. Some agents add their own fees that have nothing to do with the policy premium or the fees and taxes charged by the states; it’s simply a way of putting more money in their pocket. All fees and taxes should be considered when calculating the true cost of a *non-admitted* insurance policy.

8. **Is my approval required before any settlement is made by the insurance company on my behalf?** Any time an insurance company makes a payment to a patient/plaintiff on behalf of a policyholder, the insurance company must report both that payment and the policyholder to the National Practitioner Data Bank (NPDB). Unfortunately, most insurance policies don’t 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 rather than to defend you and your professional reputation.

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. The information reported to the NPDB could affect not only your reputation, but also your ability to practice in the future. Most *non-admitted* insurance companies do not require your approval or consent before they settle a claim on your behalf. As a point of reference, the policies offered by AANA Insurance require that the policyholder approve any claim settlement before it is made on his or her behalf.

If you want more information about the daily, weekly, monthly, and annual policies offered by AANA Insurance Services, or if you have any other questions about professional liability insurance, please contact us at (800) 343-1368. AANA Insurance Services is wholly owned by the American Association Nurse of Anesthetists.■