Contemplating Coverage: Insurance for Nonprofits

By

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Are you suddenly responsible for buying insurance for your nonprofit? Or perhaps you have been responsible for some time but have just realized that there are a few gaps in your understanding of what you buy, why you buy it and how to evaluate providers, products and the process? Or are you starting a nonprofit and unaware of your insurance needs and options? Although we've heard leaders joke that a book on insurance is an instant cure for insomnia, we've also heard that worrying about whether a nonprofit's coverage is adequate may lead to sleepless nights. Paying too much for insurance or buying coverage you don't need is a waste of precious financial assets, while ignoring the reality of inadequate coverage exposes your nonprofit to costly financial losses. The bottom line is that your organization deserves to pay a fair price for the coverage it needs, and you deserve a good night's sleep.

Three Categories: A Simple Framework

The commercial insurance policies purchased by nonprofits fall within one of three broad categories: 1. property coverage; 2. liability coverage; and 3. life/health (benefits) coverage.

1. Property Coverage: this category of policies finances the cost to repair or replace property your nonprofit owns, or property in your care, custody and control.
2. Liability Coverage: this category of policies responds to legal claims and demands alleging wrongdoing on the part of your nonprofit. These policies have two components: indemnity coverage to make the victim of harm or loss "whole"; and defense coverage to cover the cost of counsel to represent and defend your nonprofit.
3. Life/Health (Benefits) Coverage: many npublic entities offer a wide range of benefits to their employees, which may include health insurance, life insurance, and short-term and longterm disability coverage.

Key Considerations

In the paragraphs below we explore some of the key considerations in purchasing commercial insurance for a nonprofit.

- **Consider a la carte or prix fixe**— Many fine dining restaurants offer the option of a "prix fixe" menu—a full meal designed by the chef for a single price. When you order the prix fixe option, you may wind up eating one or more courses that you don't necessarily need or want. But by opting for the prix fixe selection you get a better deal. Insurance can be purchased a la carte or in packages. Savvy and experienced risk managers may prefer to buy separate policies for separate needs. When you do so you probably have greater flexibility when it comes to customizing the coverage to meet your needs. For example, you may be able to negotiate a change in wording on an endorsement, or have an exclusion removed. Yet many buyers prefer the convenience and savings of insurance policy packages. There is no right or wrong way: it's a matter of choice.

- **Find a worthy partner**— Many first-time insurance buyers are surprised to learn that when it comes to buying insurance for a nonprofit, it generally isn't possible to buy direct. Buying direct means purchasing coverage from the insurance carrier that will be underwriting the coverage. Purchasing commercial coverage—with rare exceptions—generally requires using a licensed intermediary. These licensed intermediaries are referred to as agents and brokers. Although the essential role of your agent is to "place" the coverage your "The most important consideration in choosing an agent or broker is finding someone you trust and can depend on. Think of your agent or broker as an extension of your mission, and not a costly 'middleman.'" nonprofit needs with appropriate carriers, it's important to understand that agents and brokers aren't just middlemen whose participation increases the cost of what you buy. A knowledgeable agent or broker can help your nonprofit make wise purchasing decisions by:
  - Pointing out areas of exposure for which coverage is available
  - Explaining the terms and conditions contained in the insurance contracts
  - Assisting you answer questions contained on coverage applications
  - Letting you know about loss control and post-loss assistance available from your carriers

  The most important consideration in choosing an agent or broker is finding someone you trust and can depend on. Think of your agent or broker as an extension of your mission, and not a costly "middleman." A dependable agent or broker will promptly return phone calls, provide thoughtful answers to your questions, and offer coverage options that suit your budget and insurance buying goals. Signs you're working with someone who isn't a true business partner include:

  - Statements suggesting that no companies want to insure your organization because it is a nonprofit, or because of your unique mission or operations
  - Delivery of a single option for coverage, at minutes or hours before your current policies expire, accompanied by a "take it or leave it" attitude
  - Repeated mention of the small size and inordinate demands of your nonprofit
- **Give the process the time and attention it deserves**— Your right to be frustrated with "last-minuteitis" on the part of your agent is unwarranted if you dragged your feet and only reluctantly provided information needed to complete the applications for coverage. Start the process of considering the insurance renewal at least 90 days prior to your policy expiration date(s). Wherever possible, meet in person with your agent or broker to discuss:
  - **Claims history and experience**— Have you filed claims during the past year? If so, how were they resolved? Were you pleased with the support provided by your carrier, or surprised to receive a declination of coverage letter?
  - **Program and organization changes**— Has the organization grown since the last renewal? What key programs or activities have been launched or discontinued? What new services are on the drawing board for the next year?
  - **Exposure and marketplace changes**— Have there been changes in the marketplace that warrant consideration of new coverages for your nonprofit? For example, are some carriers now excluding claims that they previously covered under the general liability policy? Have the underwriting appetites of your current carriers changed? Are there any additional companies that would or might be interested in providing coverage for your nonprofit?

Eight Liability Coverages for Nonprofits

The paragraphs that follow explain the basic purpose of eight of the most commonly purchased liability policies. As you read this section keep in mind that:

- Insurance companies (carriers, "markets" and pools) often develop unique, or somewhat unique names for their custom policies; and
- Commercial insurance policies may be purchased as stand-alone products or grouped together in a package.

1. **Commercial General Liability (CGL)** — Most General Liability policies written in the U.S. use the standardized 16-page form drafted by Insurance Services Office, Inc. (ISO). ISO's Commercial General Liability Coverage Form is commonly called the CGL. The form is designed to insure a wide range of commercial, industrial, and nonprofit operations and various types of claims. The three major

components of the CGL are: bodily injury and property damage liability, medical payments coverage, and personal injury and advertising injury liability. The CGL promises to pay on behalf of the policy's insured parties their legal liability for damages arising out of unintended injuries to non-employees and damage to the property of others. Usually such claims allege that the insured policyholder, through an employee or independent contractor under the policyholder's supervision, has been negligent and their negligence has caused the injury or damage. The CGL's promise includes investigation and defense.

2. **Directors' & Officers' Liability (D&O)** — D&O policies cover claims arising out of the management decisions of volunteer board members, officers, employees, and the organization itself.
   Many public officials view D&O coverage as one of their most important policies. This is not only because D&O insures current and past board members, but also because it is often a prerequisite to attracting new board members. A further attraction is that many nonprofit D&O policies include coverage for the direct liability of the corporation, so-called entity coverage. There are no standard D&O policy forms or applications. Each insurer writes its own, resulting in substantial differences among insurers, perhaps greater than in any other coverage field. Each form must be read closely to ascertain the scope of insurance provided.
3. **Employment Practices Liability (EPL or EPLI)** — EPL policies address claims alleging wrongful employment acts. Entities with at least one paid employee are at risk of claims potentially covered under an EPL policy. Some of the most common claims defended by EPL policies are: wrongful termination, employment discrimination, sexual harassment, age discrimination, religious discrimination, wrongful employment decisions that violate the Americans with Disabilities Act, and illegal retaliation. EPL may be purchased as a stand-alone coverage, or as part of a D&O or other management/ professional liability policy.
4. **Professional Liability (PL)** — Sometimes called malpractice insurance or errors and omissions insurance, professional liability protects a nonprofit against claims alleging errors and omissions in the delivery of professional services. A growing number of government organizations recognize the need for this coverage, including social services agencies, health clinics, and more.
5. **Sexual Abuse and Molestation** — Sexual abuse and molestation is a tragic societal problem that reaches a wide variety of organizations, including nonprofits. Historically, until the mid-1980s, coverage for sexual abuse claims who not always addressed specifically within policies, thus leaving the policies open to interpretation. Policyholders would claim that their general liability policies provided coverage, while insurers disagreed. Today sexual abuse and molestation coverage can be proactively covered in a variety of ways: as a stand-alone policy form developed specifically to address this coverage, as a separate section of a package policy, or as an addon to a professional liability policy. All organizations that work with vulnerable clients should consider purchasing this coverage.
6. **Automobile Liability** — All nonprofits rely on the use of automobiles to some extent and may have legal obligations arising out of their use. Automobile accidents are one of the more obvious sources of liability claims typically from an employee or a volunteer driving an organization-owned vehicle. If employees or volunteers use their own vehicles in furtherance of the nonprofit's activities, the nonprofit may have some secondary legal responsibility. Automobile liability insurance for nonprofits is provided by commercial policies that are quite straightforward and somewhat similar to personal automobile insurance policies. A complicating factor is that there are substantial differences state-to-state in the liability exposures and insurance requirements. For example, Michigan requires no-fault Personal Injury Protection coverage, while Illinois mandates legal liability coverage with minimal limits.
7. **Cyber Liability** — A growing number of insurers offer different forms of cyber liability coverage, but many policies address similar coverage areas. Cyber liability policies may include third party and first party coverages. Third party coverage protects the insured organization against claims that arise from losses suffered by third parties, such as donors or clients. First party coverage protects the insured for its own losses. Examples of specific coverages available under a cyber liability policy include: notification expense coverage, crisis management, regulatory investigation expense, data breach liability, content liability, data loss & system damage (data restoration) coverage, and business interruption. For more information on this exposure and available coverage, see: Data Privacy and Cyber Liability: What You Don't Know Puts Your Mission at Risk at www.https://nonprofitrisk.org/
8. **Umbrella and Excess Liability Coverage** — This category of insurance includes high-limit legal liability policies intended to cover losses that are not fully insured by other policies, either because the dollar amount of the liability incurred exceeds the limits of the other liability policies, or because the nature of the loss is not insured by the underlying or lower limit policy. Umbrella Liability Insurance policies provide legal liability coverage for various types of injuries and property damage arising out of accidents that occur during the policy period. Umbrella policies provide additional dollar limits of coverage over and above the dollar limits of other liability insurance policies that are written with an accident/occurrence trigger. These other policies are often called primary policies and, with respect to the Umbrellas,

underlying policies. Three common underlying policies are the CGL, Automobile Liability, and Employers Liability (Part B. of the Workers Compensation Insurance policy). In the event that the per occurrence or aggregate limit of an underlying policy has been used-up or exhausted, an Umbrella policy will effectively drop-down to afford additional limits up to the Umbrella's maximum limit of liability. Of the three policies noted above, only the CGL has aggregate limits, but all have per occurrence maximum limits.

Excess Liability Insurance policies provide additional limits and drop-down coverage for the underlying policies that are identified in the policy. However, unlike Umbrellas, they can provide excess limits over policies written with a claims-made trigger. Thus, a nonprofit organization may have two policies providing additional limits above its primary policies: an Umbrella and an Excess Liability Insurance policy. Some insurers will provide a combined policy with Umbrella coverage and Excess Liability coverage over the claimsmade primary policies.

Four Property Coverages for Nonprofits

1. **Building and Contents Coverage** — Nonprofits have many options for insuring owned or leased buildings, their contents, other personal property, and property that belongs to others but is used by the entity. Coverage is also available to offset the consequential financial impact generated by the loss of use of your property. It is important to identify and consider all these options and choose the ones that best fit your needs. It is important to know what you want before you begin. Today most property insurance for nonprofits is written in package policies that combine property coverage with basic legal liability coverages. Most insurers offer premium credits for package policies. However, stand-alone property policies are still available and they can provide coverage as broad as is available under package policies. In some cases, a stand-alone property policy may be more comprehensive and preferable to a package. In general, the coverage available for nonprofit organizations is the same as that offered to corporate commercial accounts. Standard ISO basic policies describe "covered property" as:
    - Buildings, machinery, maintenance equipment, appliances, outdoor furniture, additions, and construction materials.
    - The personal property, including furniture, leased property you are obligated by contract to insure, and, if you lease the premises, your interest in the alterations to the building and other "improvements or betterments," and personal property of others over which you have control at or near your buildings.
2. **Crime Coverage** — A crime policy is generally a package of policies that protect an organization against intentional theft by insiders, as well as the theft of assets by third parties. The term fidelity bond is often used interchangeably with crime coverage. Technically, however, a fidelity bond. also called an employee dishonesty bond—is actually just one component of a broader crime policy. In addition to the employee dishonesty component, a crime package may include: "State workers' compensation statutes typically mandate that the employer provide for the injured employee's medical expenses, rehabilitation costs, and a portion of lost wages." Forgery or alteration — Coverage for accepting forged documents when the forgery was committed by non-employees, and accepting a check from an imposter. It also provides a defense to a nonprofit for refusal to honor a document that it thinks is a forgery.
    - Theft, disappearance, and destruction— Broad theft coverage for any act of stealing committed by non-employees, both on and off the insured's premises, with few restrictions.
    - Robbery and burglary— Coverage for the robbery of a night watch person, a custodian, or a courier going to the bank, and burglary from the premises or a safe.
    - Computer fraud— Covers unauthorized transfer of money or other property (such as a proprietary mailing list) committed by non-employees from a computer inside the premises to a computer or printer outside the premises.
    - Extortion— Covers the kidnap of a person by a non-employee with a threat of bodily harm unless a ransom is paid.
    - Liability for another's property— Offers protection against theft of a client's property stored in a safe or safety deposit box.
3. **Workers' Compensation**— When a nonprofit hires employees it takes on many new responsibilities, including potential legal liability for their on-the-job injuries. State workers' compensation statutes typically mandate that the employer provide for the injured employee's medical expenses, rehabilitation costs, and a portion of lost wages. While there are federally mandated minimums for these state programs, there is no uniform national law. Every state requires virtually all employers to provide workers' compensation coverage. Exceptions are sometimes made for very small employers, and for domestic and agricultural workers. For example, Kansas exempts agricultural employers and those with gross annual payrolls of not more than $20,000. Insurance provided by private insurers follows the state law requirements and also provides additional coverage for any common law liability of the employer.

Workers' compensation insurance covers the entire scope of the state statute. Each state administers and oversees its workers' compensation benefits program through a board or commission. However, most claims are resolved between the insurer's claims adjuster and the injured worker, health service providers, a third party administrator retained by large employers, and the worker's attorney, if one is involved. Employees who disagree with the assessment and evaluation of their claim by the claims adjuster can appeal to the state commission that adjudicates or arbitrates claims. Employers and workers can appeal these administrative decisions to state courts, but appeals are infrequent, as they must relate to the arbitrator's interpretation of the statute and not to the underlying facts in the case.

4. **Business Interruption and Extra Expense** — Business interruption and extra expense policies reimburse an insured for the loss of net income plus expenses during a period when the insured cannot operate normally due to damage or destruction of property. For example, due to a fire at the headquarters building owned by a youth-serving entity, the organization is unable to host an after-school program that generates $10,000 in net income each month. The nonprofit incurs additional expenses to notify the parents of participants as well as additional expenses to rent office space from which administrative operations can continue. Like other forms of coverage, business interruption coverage is based on the principle of indemnity, which provides that insurance should put the insured or damaged party in the same position as they were prior to the loss no better and no worse. Business interruption claims are somewhat difficult to resolve because they rely on projections of future income streams and expenses. As is true with other forms of property coverage, the insured nonprofit has the burden of substantiating its losses to the insurance carrier.

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