

Abuse Coverage Isn't as Elusive as a Needle in a Haystack, but It Will Cost You



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Hardening market conditions cause nonprofit risk managers to lose sleep and patience after receiving nonrenewal letters, notices of changes in the terms and conditions of coverage, and word from weary brokers and agents explaining that the same or less coverage purchased in the past may cost more than last year. The margin in a nonprofit is often slim and news that property and casualty coverage will cost more necessitates a difficult conversation about cutting expenses elsewhere to fund more costly premiums.

One of the coverage areas that has historically—and more recently—caused the most distress is liability coverage for allegations of sexual abuse and molestation committed by a paid or volunteer staff member or a client. This coverage is sometimes labeled “improper conduct” or “improper sexual conduct,” or even “explicit sexual abuse/molestation.”

Historically, in the wake of highly publicized claims nonprofit buyers of this coverage may:

- face nonrenewal of sexual abuse coverage
- receive notice of significant reductions in available limits of liability
- learn that underwriters expect policyholders to have far more rigorous and comprehensive abuse prevention strategies in place, or
- face new policy exclusions that narrow the availability of coverage.

What's Behind the Reality?

The reasons for these developments are multi-fold. A former board member of NRMC once told me that changes in underwriting practices are due in part to what he called “underwriting by anecdote.” News reports about sexual abuse, advertisements encouraging victims of abuse in specific organizations to call legal hotlines, and even [contentious Congressional hearings](#) focused on the handling of abuse allegations arguably create a perfect storm of concern. As was true two decades ago, headlines, perhaps as much as reality, provide the basis for underwriting decisions related to this line of coverage.

Coverage Options

Coverage to protect a nonprofit against claims alleging sexual abuse is available in many forms.

- *Provider types*: it's possible to purchase coverage from a domestic, admitted carrier; from an excess and surplus lines carrier; or from a risk retention group or other alternative market insurance provider.
- *Policy types*: sexual abuse coverage is sometimes sold as a separate policy, while in other cases it's covered under the Commercial General Liability or Professional Liability policy. In one unusual case many years ago, NRMC found coverage provided under an Employment Practices Liability policy (in this example the policy responded to claims by participants, clients and third parties alleging abuse by paid and volunteer staff, as well as clients).
- *Defense costs*: some policies pay defense costs above and beyond the limit of liability that's available for judgments and settlements. Other providers offer coverage with defense costs included in the limit of liability. Some providers offer both options.
- *Coverage type*: coverage is usually provided on a claims-made basis, but is sometimes available on an event-trigger or occurrence basis.

How to Cope With Challenging Market Conditions

In the section that follows, we offer several tips for obtaining adequate sexual abuse coverage for your nonprofit. This advice assumes that you have already decided your nonprofit requires this coverage, or you need the coverage to comply with the terms of a grant or contract. All of the suggestions will not be meaningful for every reader. We invite you to review this list and identify the steps that could help you address the challenges your nonprofit faces with respect to this line of coverage.

- Consider whether you're working with an insurance advisor (broker or agent) who has a large book of business with a carrier that writes sexual abuse coverage. In some cases, such as when your broker is approaching a company that specializes in nonprofits and writes sexual abuse coverage regularly, the market clout of your broker may be a lesser issue. But in other instances, the broker's influence with the carrier will play an important role in the decision to offer your nonprofit the coverage you want at the limits you're seeking.
- If you're unable to obtain the limits of liability required under a private or government grant or contract, immediately contact the appropriate administrative official at the funder to discuss the challenge you have encountered and how you can reach a mutually-agreeable resolution. Don't simply run the risk the funder won't find out you have failed to comply with this grant or contractual requirement.
- Discuss with your broker the possibility of detaching abuse coverage from your other liability coverages (e.g., CGL and professional liability) and seeking separate coverage from an excess and surplus lines carrier. Some social service providers seeking relatively high limits for abuse have decided to obtain separate policies in the alternative market, in an effort to minimize the effect this coverage has on the pricing and terms of other liability policies.
- Make certain that if your nonprofit has an abuse exposure, you have written, up-to-date policies and protocols to respond to allegations of misconduct or abuse. The policy should extend beyond meeting the minimal requirements imposed on "mandatory reporters" of abuse under state law, and include how you will handle inquiries, staffing issues, and the media.
- Consider higher retentions for your sexual abuse coverage than you might otherwise prefer, in order to demonstrate your willingness to bear some of the financial risk of claims to the underwriter. But don't accept a retention that is unrealistic for your nonprofit and would impose a serious hardship or put critical operations at risk in the event of a claim.
- Demonstrate with detailed information in your renewal application that you are complying with the carrier's requirements. Don't assume that the carrier will know that you're meeting specific risk management requirements it has imposed on insureds with sexual abuse coverage.
- Check your state's law that requires insurers to give commercial policyholders advance notice of nonrenewal or a change in coverage terms. Companies may also issue what is called an "alternative notice," which indicates the company's intent to either nonrenew or renew the coverage conditioned on a change in terms, conditions or rates. A second notice must be sent indicating the company's final decision. The notice period varies based on state law and may differ based on policy type. For example, New York policyholders are entitled to 60 days' notice, while in New Jersey 30 days' notice of nonrenewal or change in contract terms is required. In Connecticut, 60 days' notice is required for nonrenewal of most commercial coverages, although 90 days' notice is required for professional liability policies. This is an important place to know your rights under these laws, and your broker should be in a position to assist. If you receive untimely notice of nonrenewal, work with your agent or broker to vigorously dispute the insurer's proposed action. Many of these laws provide for an automatic renewal or extension of coverage if the notice requirements are not met.
- Evaluate whether your current broker is communicating insurance-related "bad news" to your nonprofit

in time to collaborate with you in addressing the challenge. If you're working with a broker that has a large book of business with the company insuring your nonprofit, the broker should be able to stay abreast of changes in the company's underwriting policies and practice. If your broker shies away from delivering bad news until it's nearly too late to do anything about it, you may need to add "finding a new broker" to your "things to do list" for the coming year. While it's human nature to loathe conveying bad news to a customer, the mission and health of your nonprofit require that your insurance provider do so from time to time.

- Plan to begin working on your insurance program renewal at least 120 days in advance of the renewal date, and develop a realistic timetable for completing required applications, compiling information, and responding to underwriters' questions about your operations.
- Make certain that the information presented in your renewal or new coverage applications is clear, complete and likely to be understood by someone who knows little or nothing about your nonprofit or your corner of the nonprofit sector (e.g., social services, literacy, outdoor recreation). There is no guarantee that the same underwriter who reviewed your application will be involved on your account this year. Don't use jargon or acronyms on your insurance applications, particularly when describing the operations (and exposures) of your nonprofit and the risk management measures you have in place to minimize the likelihood of claims arising.
- Keep in mind that when you're applying for coverage, you're selling your "insurability" to a provider who is going to risk capital in exchange for an annual premium. You'll need more than a compelling mission to convince underwriters that your nonprofit should be offered the sexual abuse coverage limits you want or believe you require. A funder's requirement that your nonprofit purchase coverage at a certain limit of liability isn't enough to convince a carrier that your nonprofit is a good risk when it comes to sexual abuse coverage.
- Ask your broker whether he or she prepares a thoughtful cover letter for your application that encapsulates the risk and highlights the risk management measures in place. Most brokers will have already spoken with an underwriter about your account before they submit your application, but a carefully crafted cover letter may be helpful in putting your nonprofit's best foot forward.
- Consider obtaining a quote for "claims-made" coverage for sexual abuse, instead of the preferred occurrence-based coverage. Although most insureds and insurance advisors would argue that insuring this risk on an occurrence form is desirable, keep in mind the possibility of forfeiting the preferred form in exchange for the desired coverage.
- While considering the resources and circumstances facing your nonprofit, strive to have the most appropriate procedures in place and in use specifically to prevent abuse or unfounded allegations. More than just having such procedures in place, however, make sure that your policies are consistently followed. A carrier will respond more favorably to a process which is shown to work than one which exists on paper.

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