



What Does “*Additional Insured*” Really Mean?

Home Health Care agencies commonly enter into contracts in the course of their business. Indemnification agreements, hold-harmless agreements, exculpatory agreements, waivers of recovery rights clauses, and additional insured or other insurance requirements are often found in contracts. It is important that organizations and their attorneys review all contracts carefully to determine if the contractual requirements can be met, and if it is desirable for the organization to do so. Certificates of Insurance should be collected from subcontractors to provide evidence that an outside organization or individual carries sufficient insurance coverage. Whenever possible, the Certificate of Insurance should name the certificate holder (i.e. Home Health Care agency) as an Additional Insured. In some cases, a Home Health Care provider or Medical Staffing company may be asked to name another entity as an Additional Insured.

An Additional Insured request is one of the more common *insurance* requirements in a business relationship. If the request is in response to a contractual obligation, it is important to know that an insurance policy may or may not respond in concert with the terms of that contractual obligation.

What does it mean to be an *Additional Insured*?

An Additional Insured person or organization added by endorsement to a liability insurance policy is considered an insured under that policy and therefore can enjoy the benefits of that policy. Typically the coverage only applies to claims brought against the Additional Insured for liability created by the NAMED INSURED’S act or failure to act. This means that the additional insured endorsement would not likely afford any coverage for a claim brought against the Additional Insured for its own act (or failure to act). Also, many liability insurance policies include provisions that either make it (1) excess over any other available insurance, or (2) only apply in proportion to the contributory negligence of the Named Insured (the Additional Insured’s insurance may share some responsibility for the claim).

What does *Primary and Noncontributory* mean?

This is a fairly common request made in conjunction with an Additional Insured request. A Primary and Noncontributory clause sets the order in which insurance policies possibly covering the same claim respond. When a Home Health Care Agency (“HHA”) provides Primary and Noncontributory insurance coverage for an Additional Insured, the HHA’s policy has to pay claims before the Additional Insured’s policy. Also, the Additional Insured’s policy will not contribute at all to the loss (other than on an excess basis) regardless of the extent of the Additional Insured’s contribution to the situation creating the claim.

What is a ***Waiver of Subrogation***?

This is another somewhat common request concerning Additional Insureds in contractual relationships. Typically, insurance policies require the policyholder to ***subrogate***, or transfer rights of recovery to the insurance company. If a Home Health Care Agency and its insurance company waive their rights of recovery against an Additional Insured, the insurance company is not able to recover funds from that Additional Insured. This means if it is discovered the Additional Insured was at fault after the payment of a claim to a third party, the HHA's insurance company cannot recoup any of that money from the Additional Insured and the claim will remain part of the HHA's loss history.

Requests to provide Primary and Noncontributory coverage and / or Waivers of Subrogation should be reviewed carefully with a qualified insurance broker.

Questions you may ask yourself:

- Do I want to assume the responsibility and costs associated with risks and liabilities I cannot control or prevent?
- Do I want my insurance policy to pay claims for which I am not responsible?
- Do I want my insurance limits reduced or exhausted by such claims?
- Do I want my insurance experience (loss ratio) and rates impacted by such claims?

Liability insurance policies are designed to provide protection for organizations and individuals for sums they are legally obligated to pay as damages to others. There is typically coverage for defense costs and other sums that may be within or in addition to the policy limits. There are, however, many variables affecting how coverage applies from one policy to the next.

APU's Home Health Care program has prepared this article for informational purposes only. It is not intended to provide legal advice. Readers should not rely on this document or act upon any of the information it contains without first consulting competent legal counsel.

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