

# Understanding the True Cost & Pitfalls of Additional Insured Endorsements for Behavioral Healthcare Insureds

Everyone knows the fine print matters, but it is especially important when it comes to the additional insured endorsements sometimes requested by partners. Clauses requiring such endorsements can be expensive in ways insureds may not realize. Understanding the hidden costs of an additional insured endorsement can keep an insured from unfairly paying for another's mistakes or unintentionally elevating insurance costs. Contractual provisions requiring additional insured endorsements can vary, and the differences can make a world of difference.

## WHAT IS AN ADDITIONAL INSURED ENDORSEMENT?

In its most basic form an additional insured endorsement is an insurance policy provision that identifies a specific third party as covered by the policy for claims caused by the insured. Initially, this can seem fair and uncomplicated. However, third parties often demand additional advantages that make it more complicated, expensive, and perhaps unfair for the insured.

## WHAT TERMS OR CONTRACT LANGUAGE SHOULD INSUREDS WATCH FOR?

If the fine print matters, so does the terminology. It's important to understand that the terms "additional insured" and "named insured" are not interchangeable. A "named insured" has the complete coverage provided by the policy along with responsibilities such as paying the premium and notifying the company of claims. In contrast, an "additional insured" has coverage that is usually more limited and is specifically defined by the endorsement.

## GUEST CONTRIBUTOR



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an insurance company owned exclusively by behavioral healthcare providers, for more than 33 years. While he is responsible for providing risk management services to those insured by MHRRG, he also serves as a consultant with Negley Associates, a leader in the behavioral healthcare insurance space. Ron leads Negley's Individualized Risk Management Program (IRMP), using a variety of risk management and loss spectrum tools to help organizations reduce the risk to employees, clients, and the organization.

An expert in the areas of personal injury, nursing malpractice, and medical malpractice, Ron has been recognized nationwide for his guidance enabling healthcare providers to provide safe, high-quality care. He is published in the Florida Bar Journal and has been a featured speaker in many risk management video and audio presentations.

Along with these terms, insureds should keep an eye out for common contract language stating that, “The coverage for the additional insured must be primary, noncontributory, and there must be a waiver of subrogation.” The “primary” designation means that the insured’s policy is required to pay for the defense and settlement of a claim before any other insurance pays. The term “noncontributory” indicates that the third party’s insurance isn’t required to contribute toward payment of a claim because the insured’s insurance must pay up to the policy limits. Finally, the phrase “waiver of subrogation” means the insured’s insurance company cannot ask the third party or their insurance company to pay the portion of a claim actually caused by the third-party. Making sure to understand the implications of the terms and language used gives clients the best chance of obtaining an equitable deal.

### ARE ADDITIONAL INSURED ENDORSEMENTS FAIR TO INSUREDS?

Initially, the concept of an additional insured endorsement seems fair. Insureds pay for insurance that covers claims against the third-party caused by the insured. But, in some instances additional insureds will demand to be covered by the insured’s policy for claims that are solely their fault. When it comes to claims caused solely by the third party or by both the insured and the third-party, the advantage can shift dramatically toward the third party. It would seem logically equitable for the third-party or their insurance company to pay for the portion of the claim they caused, but the insured’s insurance company can be on the hook for 100% of claims in a variety of situations based on the endorsement’s specific language.

For example, behavioral healthcare providers often maintain agreements with the state to place children in foster homes. Typically, the state asks to be named as an additional insured on the provider’s policy. If the state fails to disclose important information about a child, and the provider places the child in an inappropriate home, both the provider and the state can be sued for possible injury, and the insured’s policy may be required to pay the entire claim, even though the state was partially at fault.

In addition, if an insured rents a building for use as a supervised apartment the landlord may ask to be named as an additional insured on the general liability policy. Unfortunately, the landlord may fail to disclose information about the building’s status. For example, if the building’s stairs aren’t in compliance with current building codes because the height of the riser is too short and someone falls on the stairs, both the insured and the landlord may be sued. While the landlord is at least partly at fault, the insured’s insurance company may end up paying the whole claim. Organizations that lease equipment for professional services, such as copy machines, often ask to be named as additional insureds on general liability policies. However, if the equipment company installs a copier incorrectly, it can create an electrical hazard that the insured may not recognize. Then, if someone is injured, the insured’s insurance company will likely be asked to pay all claim costs.

Some behavioral healthcare providers have contracts with local, hospital emergency rooms to assess ER patients for suicide risk. Being aware of a history of any past suicide attempts is crucial to adequately assessing the level of suicide risk. If a patient discloses a past history of attempts to an ER nurse but the nurse forgets to enter it in the record, the behavioral healthcare provider may not know about one of the most important suicide risk factors. Some patients worried about being hospitalized involuntarily may not disclose all pertinent facts to the behavioral healthcare provider. If the behavioral healthcare provider then goes on to assess the patient as low risk and discharges the patient, both the ER and the behavioral healthcare provider could be sued if the patient completes a suicide soon after discharge. While the ER is likely to be at least partly at fault, if the additional insured endorsement is primary and noncontributory the insured’s insurance company may be obligated to pay the entire claim.

### HOW DO ADDITIONAL INSURED ENDORSEMENTS MAKE INSURANCE MORE EXPENSIVE?

The true cost of paying claims like those discussed above can cause costs to skyrocket in several ways. Because all insurance pays only up to a set limit, these amendments can serve to effectively reduce policy limits. If an insured’s policy limit is \$1 million, and a \$1.2 million claim is submitted, for which the insured is only 50% responsible, but the additional insured endorsement is primary, noncontributory, and includes a waiver of subrogation, the insured’s insurance company pays \$1 million even though the insured only caused \$600,000 of the claim. The insured will also

have to pay the \$200,000 in excess of the policy limit. In such an instance, naming the additional insured effectively reduced coverage to \$600,000. In addition, the insured would have maxed out insurance coverage for the remainder of the policy year. It's also important to keep in mind that some policies place the cost of defending a claim, including expensive attorney and expert witness fees, outside policy limits. While other policies may include the cost of defense, it makes sense that it would be more expensive to defend two parties rather than one; therefore, the cost of defending the additional insured further reduces the insured's limits.

Additional insured endorsements can also impact the insured's loss history, which plays a role in determining premium. "Loss history" refers to the losses paid on the policy. Losses paid for an additional insured are considered part of the client's history, and a negative loss history can often cause premiums to rise. Even worse, a negative loss history has the potential to make it difficult for an insured to renew a policy or find needed, appropriate coverage from another carrier.

## HOW CAN BROKERS HELP PROTECT INSUREDS FROM UNFAIR ADDITIONAL INSURED ENDORSEMENT REQUESTS?

Serving the best interest of clients requires that brokers take the time to provide insightful counsel around additional insured endorsements. Clients and brokers should carefully review third party contract provisions concerned with insurance in order to fully comprehend the potential impacts of the contract before signing. Because of the potential negative impacts of additional insured clauses, the insured should always resist agreeing to an additional insured clause in any form. While typical additional insured endorsements only cover claims caused by the named insured and do not cover claims that the named insured did not cause, this cannot be assumed. If an additional insured endorsement cannot be avoided, insureds should resist agreeing to language stating that the additional insured coverage is primary and noncontributory. If there is any ambiguity about the contract's insurance requirements, the insured should consult with an attorney or other professionals to clarify the contract's parameters.

Brokers should also advise clients to negotiate the specifics of the contract's insurance and indemnification requirements. Insureds should point out to third parties that they are only requesting a fair division of responsibility by asking to omit requirements that additional insured coverage be primary and noncontributory with a waiver of subrogation. Brokers should also make sure to remind clients to contact their insurance company to request review and approval of additional insured endorsement language. It would be unwise for an insured to assume that the insurance company will agree to contract wording. Often, insurance companies prefer using their own policy language and don't want to provide coverage using someone else's language. In addition, if an insured signs the contract before obtaining language approval from the insurance company, the client can end up in violation of the contract and without any additional insured coverage. In addition, brokers can help insureds understand the specifics of contract clauses that obligate them to indemnify another party. "Indemnification" means that if the third party is sued due to the client's negligence, the client is required to pay for the claim. It's important to note that contracts typically don't limit indemnification to the amount of additional insured coverage available. The obligation to "indemnify" the third-party generally extends to the whole amount of the claim, whether there is insurance to cover the whole amount or not.

Clients should also carefully determine compliance with the additional insured provisions of the contract because contract provisions can vary. Brokers may suggest that insureds have a professional review the contract's additional insured provision to compare it to the insurance policy, ensuring that the client is in compliance with the contract. If a claim is made against the additional insured and the client has not secured the correct coverage, the insured could potentially be found liable for breach of contract.

## BOTTOM LINE

Looks can be deceiving when it comes to additional insured endorsements. They may not be as broad or clear as they seem at first glance. Many contain language pitfalls that aren't apparent until a loss occurs. Taking time on the front end to complete appropriate due diligence can help save costs and protect against losses on the back end. Brokers and clients should make every effort to resist agreeing to additional insured clauses, take the time to carefully review and understand contract provisions, and consult with industry professionals to approve policy wording or ensure compliance with contract parameters. Contact your producer for more information.

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Over the last 50 years, Negley Associates - a division of CRC Group - has built a solid reputation as a leading insurance provider for the behavioral healthcare, addiction, and social service industries. Negley strives to meet the unique needs of behavioral healthcare providers by bringing together world-class insurance experts to create a broad spectrum of customized insurance coverage options. Combining deep industry knowledge, unmatched underwriting expertise, excellent claim services, and top-quality risk management programs ensures that each client benefits from the most comprehensive insurance programs available in today's market. Negley also offers the industry's first Individualized Risk Management Program (IRMP) at no additional cost to policyholders, expertly guiding insureds through an innovative risk reduction plan that empowers them to focus time and energy where it is needed most - delivering top-quality care to clients.