Agency

Insurance Department

Subject

Claims-made Liability Insurance Policies

Inclusive Sections

§§ 38a-327-1—38a-327-6

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Claims-made Liability Insurance Policies

Sec. 38a-327-1. Definitions

As used in Sections 38a-327-1 to 38a-327-6, inclusive:

(a) "Claims-made policy" means an insurance policy or an endorsement to an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring prior to the effective date of the policy, but subsequent to the retroactive date, if any), arising out of incidents, acts or omissions, as long as the claim is first made during the policy period or any extended reporting period.

(b) "Claim" means written notice of any act or omission of the insured, or of any incident, alleged to have caused injury or damage that the insured is legally obligated to pay, whether or not constituting a legal complaint.

(c) "Incident" means a specific act, omission, occurrence or circumstance which may reasonably result in a claim.

(d) "Commissioner" means the Insurance Commissioner of the State of Connecticut.

(e) "Retroactive date" means a date concurrent with the effective date of the policy or with the effective date of coverage for a new operation or location added to the policy, or a specified date prior to the effective date of the policy upon which the insurer and insured agree in the policy that coverage will be applicable.

(f) "Additional extended reporting period coverage" means:

(1) For policies described in Section 38a-327-2 (1), (2), (3) and (5), coverage for that period of time specified in the policy wherein claims first made after the termination of coverage under the policy, for acts, errors or omissions that occur on or after the retroactive date, if any, but prior to expiration of the policy term will be considered made during the policy term;

(2) For all other types of policies, coverage for that period of time specified in the policy wherein claims first made after the termination of coverage under the policy, for injury or damage that occurs on or after the retroactive date, if any, but prior to expiration of the policy term will be considered made during the policy term.

(g) "Automatic extended reporting period coverage" means coverage for that period of time specified in the policy wherein claims first made after the termination date of the policy but within thirty (30) days of the termination date of the policy will be considered first made during the policy term.

(h) "Aggregate limit" means the specified maximum limit of liability which shall apply for each policy term as the total limit for one or more claims.

(i) "Excess liability policy" means any commercial liability policy, other than an excess motor vehicle liability policy, written over: (1) one or more underlying liability policies that in the aggregate provide primary coverage of at least one million dollars ($1,000,000); or (2) a liability self-insured retention of at least fifteen million dollars ($15,000,000).

(j) "Termination of coverage" means, whether made by the insurer or the insured at any time: (1) cancellation or nonrenewal of a policy; or (2) decrease in limits, reduction of coverage, increased deductible or self-insured retention, new exclusion, or any other change

in coverage less favorable to the insured.

(k) "Named insured" means: (1) the first named insured, with respect to directors and officers liability, employee benefits liability and fiduciary liability policies, and (2) all named insureds, with respect to all other types of claims-made policies.

(Effective September 25, 1992; Amended September 9, 2013)

Sec. 38a-327-2. Types of coverage of risks

Claims-made coverage may not be provided in any policy delivered, issued for delivery or renewed in this state by a licensed insurer on or after the effective date of this regulation, unless the claims-made policy is issued for one of the following lines, sublines, risks or coverages:

(1) Directors and Officers Liability;
(2) Employee Benefits Liability;
(3) Errors and Omissions Liability;
(4) Excess Liability;
(5) Fiduciary Liability;
(6) Pollution and Environmental Impairment Liability;
(7) Products and Completed Operations Liability;
(8) Professional Liability;
(9) Public Entity Liability;
(10) Commercial general liability coverage for a large business entity generating gross revenues of at least one hundred million dollars ($100,000,000) annually, and where such risk develops an annual commercial general liability manual premium on a mature level on a claims-made basis of at least five hundred thousand dollars ($500,000); or
(11) Coverage for an individual risk or class of insurance based on a request by the insurer when such insurance is not generally available and is submitted to the Insurance Department and is approved by the Commissioner.

(Effective September 25, 1992; Amended September 9, 2013)

Sec. 38a-327-3. Minimum standards

No claims-made policy shall be delivered, issued for delivery, or renewed in this state by a licensed insurer on or after the effective date of this regulation, unless such policy and the issuing insurer complies with the following minimum standards:

(a) Once a retroactive date is established with an insured, it may be advanced only with the written consent of the named insured. Prior to the advancement of the retroactive date by an insurance company, such insurer must obtain the written acknowledgment of the named insured that the named insured has been advised of the right to purchase the additional extended reporting period coverage. If no retroactive date is specified in the policy, coverage is afforded for injury or damage occurring prior to the inception date of the policy.

(b) Each claims-made policy shall provide an automatic extended reporting period of at

least thirty (30) days upon termination of coverage.

(c) A claim will be deemed "first made" when the insurer receives written notice of a claim from the insured or a third party, but this shall not preclude an insurer from utilizing either written notice of incident as the trigger of coverage under the policy.

(d) (1) Additional extended reporting period coverage shall be made available for purchase by the named insured at any time during the policy term and not later than thirty (30) days following termination of coverage, including termination for non-payment of premium. Such additional extended reporting period coverage shall apply only in regard to that coverage terminated, and shall be made available on the same terms and conditions as those specified in the policy.

(2) Where premium is due to the insurer for coverage under the claims-made policy, any monies received by the insurer from the insured as payment for the additional extended reporting period coverage shall be first applied to such premium owing for the policy. The additional extended reporting period coverage will not take effect until the premium owing for the policy is paid in full and unless the premium owing for the additional extended reporting period coverage is paid promptly when due.

(3) The insurer must advise the named insured in writing of the automatic extended reporting period coverage and the availability of, the premium for, and the importance of purchasing additional extended reporting period coverage. This advice must be sent no earlier than the date of notification of termination of coverage nor later than fifteen (15) days after termination of coverage.

(4) The named insured shall have the greater of thirty (30) days from the effective date of termination of coverage, or fifteen (15) days from the date of mailing or delivery of the advice required by subdivision (3) of this subsection, to submit written acceptance of additional extended reporting period coverage.

(5) The premium charged for additional extended reporting period coverage shall be based upon the rates for such coverage in effect on the later of the date the policy was issued or last renewed, and the insurer shall not charge a different premium for such coverage due to any change in its rates, rating plans or rating rules subsequent to issuance or last renewal of the policy.

(6) Upon termination of a claims-made policy each insurer shall offer additional extended reporting period coverage for at least the following specified durations:

(A) unlimited extended reporting period coverage for professional liability insurance policies;

(B) a minimum one year period for policies covering (i) directors and officers liability, employee benefits liability and fiduciary liability, and (ii) pollution and environmental impairment liability;

(C) a minimum three year period for all other claims-made policies.

(e) Notwithstanding subsection (d) of this section, unlimited additional extended reporting period coverage shall be provided without additional cost to the insured if, while covered by a medical malpractice policy, the insured:

(1) dies;

(2) becomes permanently disabled and is unable to carry out his or her practice; or

(3) retires permanently from practice:

(A) at or over age sixty-five and has been insured with the same insurer on a claims-made basis for a period of at least five consecutive immediately preceding years; or

(B) at or over sixty-two years of age and has been insured with the same insurer on a claims-made basis for a period of at least ten consecutive immediately preceding years.

(f) (1) Where a policy has no aggregate liability limit the insurer shall offer additional extended reporting period coverage without an aggregate liability limit.

(2) Where a policy contains an aggregate liability limit, the insurer shall offer additional extended reporting period coverage with an aggregate liability limit at least equal to the aggregate liability limit specified in such policy.

(g) The minimum standards may be waived if application is made to the Commissioner and he determines that it would improve availability of coverage and not be detrimental to policyholders.

(Effective September 25, 1992)

Sec. 38a-327-4. Disclosure and notice requirement

Every claims-made policy shall contain a notice on the first page of the policy and any certificate in either contrasting color or in boldface type at least equal to the size of type used for policy captions, conspicuously displayed, stating that the policy is written on a claims-made basis.

(Effective September 25, 1992)

Sec. 38a-327-5. Applicability

This regulation shall apply to every new claims-made policy issued to be effective on or after May 1, 1990 and to every existing claims-made policy renewed to be effective on or after May 1, 1990.

(Effective September 25, 1992)

Sec. 38a-327-6. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

(Effective September 25, 1992)