

Liability Insurance and Adult Family Homes *Issues and Solutions*

Issues:

1. Many Certified AFH providers are having difficulty obtaining or renewing Homeowners Insurance. Why?
2. Is Homeowners Insurance adequately protecting the AFH providers?
3. Does Homeowners Insurance provide any protection for the Counties?
4. Does Homeowners Insurance satisfy requirements included in the Medicaid Waiver Standards for WI AFH (SPC 202.01)?
5. Potential Solutions...

1. Many Certified AFH providers are having difficulty obtaining or renewing Homeowners Insurance. Why?

The biggest reason that Homeowners Policies are being cancelled or non-renewed is that Homeowners Insurance is not the appropriate coverage for this type of "business".

Homeowners Insurance provides coverage in the event **you** have a loss to your property (property insurance) or **you** cause damage to other people (liability insurance). **You** is the named insured (shown on the policy) and includes your residents of your household who are your relatives or other persons under the age of 21 and in the care of any person named on the policy.

In some cases, providers have also purchased an Umbrella. An Umbrella is a form of liability coverage. It is offered "on top" of the Homeowners Policy. It does not provide additional coverage, only additional limit.

The AFH providers' consumers are not included as insureds on their homeowner's policy (or the Umbrella). Therefore, if the adult family home resident were to cause damage to someone else or someone else's property, this would not be covered. Examples: If a client burned the neighbor's home or if they harm a person while at the mall. The party that received the damages (the neighbor or the mall patron) would likely sue the provider for negligent care. Homeowner's insurance does not cover these types of claims.

Homeowner Insurance companies are declining the business because they would most likely have to defend the suit, even though they would not cover the claim. The premiums they charge do not take into consideration this potential activity.

Although the AFH providers also need homeowners insurance, if they do not have the appropriate coverage in place for their "business", they may not be eligible for homeowner insurance. In that, once an insurance company finds that there is an exposure in which they cannot collect premium for, they will issue letters of non-renewal.

2. Is Homeowners Insurance adequately protecting the AFH providers?

A Homeowners Policy is not adequately protecting the AFH providers. Homeowners Policy specifically excludes business activity. Providers have a signed contract to provide services in exchange for money. This constitutes a business. Even though many adult family home

providers do not consider themselves businesses, it is important to understand how the insurance industry defines a "business" for the purpose of obtaining appropriate insurance coverage. Since all business related activity is excluded from homeowners' policies, there would be no coverage (or defense) for alleged acts of negligence, abuse, etc.

As demonstrated in the example above, if the resident causes property damage or bodily harm, the provider could get sued for negligence. There is also no coverage (or defense) if the consumer or someone on their behalf sued the provider for negligence, abuse, etc. against the consumer. Without the appropriate coverage, the providers are putting their personal assets on the line. This could make it difficult to attract and retain good quality providers.

3. Does Homeowners Insurance provide any protection for the Counties?

The only "protection" that Homeowners Insurance gives to the counties is that if a provider does have property damage, they will have a policy that will help replace the property. This should provide some continuity of service and will increase the likelihood that damaged property will be taken care of.

Counties may also be interested in whether the consumer is protected. Public policy generally requires that individuals that put others at risk or loss should carry insurance so that in the event a loss or injury (abuse or neglect of the resident, for example) does occur that money is available to pay compensation. Homeowners' policies provide no such protection.

4. Does Homeowners Insurance satisfy requirements included in the Medicaid Waiver Standards for WI AFH (SPC 202.01)?

Section 202.04(5) of the Medicaid Waiver certification standards states: "An applicant or sponsor shall provide the certifying agency with documentation of sufficient insurance coverage to provide liability protection". As discussed, the Homeowners Policy does not provide any **liability** protection for **any** claims arising out of the Adult Family Home operation.

5. Potential Solutions...

In order to adequately protect the providers (and the counties) from liability associated with having a publicly funded resident placed in their home, the providers should have a Professional Liability policy. However, it can be difficult for the providers to find a quality provider at a reasonable price. The biggest reason for this is that although the frequency for claims is low, the severity can be very high. Long Term Care liability claims are very expensive to defend. Interestingly, some of the most costly cases are those where the provider is innocent. For this reason, the insurance carrier(s) will want a minimum premium that usually exceeds providers' budgets.

However, since the frequency of claims is low, this would be a very good set up for "group purchasing". Although there are not many carriers that provide Professional Liability (approximately less than 20), a pre-set price could be negotiated with a few carriers that would offer a lower price to adult family homes across Wisconsin provided they were guaranteed to insure a predetermined number of providers. In addition, having appropriate liability coverage can make adult family homes more attractive to insurance companies for the purchase of their homeowner insurance. In that, this eliminates the exposure presented by not having the liability coverage for the "business."