



White Paper

Considerations When Choosing Medical Professional Liability Insurance

In our litigious society it is imperative for physicians to properly cover their medical malpractice exposures, but with numerous commercial carriers writing this line of business, not to mention an explosive growth in recent years of alternative markets (captives and Risk Retention Groups), selecting a suitable insurer can be a difficult choice to make. With decreasing reimbursements and escalating costs of doing business it is understandably tempting to jump at the least expensive option and call it a day, added to that is the fact that the market is considerably “softer” right now than it has been in a long time which means there are great deals to take advantage of. As enticing as that might be, physicians and their agents need to avoid making purchasing decisions on price alone when shopping for professional liability coverage to ensure that they’re getting the most comprehensive protection available.

The Carrier

Not all companies writing medical professional liability insurance are created equally and one of the first things to ascertain when considering a carrier is its stability. Any potential policyholder should be confident that his or her insurer will have the resources to respond in the event that a claim should ever arise because if a company were to become insolvent during the policy period there is a possibility that the insureds could be left bare or in the hands of State Guarantee Funds. This is why it is prudent to purchase coverage from a well capitalized, financially sound institution backed by reinsurance. Insurance rating agencies, such as A.M. Best, assign companies grades based upon their perceived strength and can be useful when making a choice. Having stated that, it’s important to be aware that many captives and Risk Retention Groups are often unrated. This is not necessarily a reflection of weakness, there are many unrated captives and RRGs which are well capitalized and soundly managed, and examining the financial integrity of the parent(s) or sponsor(s) is a good way to judge the quality of such programs.

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Another factor to take into consideration is the amount of focus a particular carrier gives specifically to physicians. Medical malpractice insurance is a specialty niche filling a very small space in the overall universe of the insurance industry. For some companies physician professional liability comprises a meager portion of their books of business, for others it is the sole focus. Some companies are even owned, operated, and governed by physicians. The level of commitment to med mal can have considerable implications in the risk management and claims handling philosophies of a carrier and it is definitely in the best interest of the physician to examine the company's understanding of their particular profession.

Claims Management Considerations

Be sure to investigate the claims management philosophy of any carrier being considered. Only buy insurance from a company with a strong commitment to providing qualified and reputable legal counsel as well as expert claim management services when needed. Verify that the claims staff is well-trained (many claims handlers are former clinicians and/or attorneys), responsive, and can provide assistance and counsel through the difficulties of a lawsuit. Getting sued is a very stressful ordeal and it's important to feel comfortable with and confident in the claims handlers and attorney(s) so definitely try and gauge the level of customer service provided by the claims department.

Risk – Quality –Safety Management Support

Obviously insurance carriers are supposed to respond in the event of a claim, but also examine the services a potential insurer offers in addition to claims management, such as risk, quality, and safety. A solid risk management program presents a wonderful opportunity for physicians to take advantage of a company's patient safety resources which can help minimize the potential for bad outcomes in their practices. Most companies give premium credits and/or continuing education credits for participation in risk management initiatives and the commitment to such services can be a key differentiator in addition to price.

Coverage Considerations

Once it has been determined that a particular carrier is sufficiently capitalized, physician oriented, and offers suitable customer service, claims management, and risk programs, the specific coverage details need to be weighed and measured. The following are all factors to consider when purchasing coverage:

Policy Form- Claims Made or Occurrence?

The differences between claims made and occurrence insurance policies can be a tricky concept to grasp. A quick summary will follow, but be sure to get clarification from your agent or broker if there is still confusion.

Claims made insurance is the more common policy form available today. A claims made form will respond to a claim reported during the policy period as long as the incidents which gave rise to the claim occurred on or after a determined day (called the Retroactive Date). This type of coverage will typically cost less than an occurrence policy on an annual basis, but if an insured should ever switch carriers, switch to an occurrence policy, or stop practicing they would be required to either purchase a “tail” or arrange for the new company to match the Retroactive Date of the expiring carrier, something which is not always possible. Depending on the details, this tail coverage can be quite substantial in terms of additional premium.

Most insurance companies stopped offering occurrence coverage in the 1980’s when the claims made form came into vogue, but with the current softening of the market it’s starting to reemerge in certain jurisdictions. It is typically more expensive than claims made but, because the policy will respond to claims arising from incidents which occurred during the policy period regardless of how far in the future the claim is reported, the occurrence policy eliminates the need to purchase a tail (the tail is essentially built in to the pricing). Most physicians insured on an occurrence form today are either employees of hospitals or residents or fellows in training programs, and generally when they leave the umbrella of the hospital they are switched to claims made policies.

Regardless of whether the policy being issued is claims made or occurrence, be sure to review the language carefully to ensure there are no problems with the terms and conditions. Never assume that something will be covered and ask your agent to clarify any areas of confusion and to ensure that you have no gaps in your coverage.

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Deductibles

Some carriers allow the insureds to take a deductible which, like on an auto or homeowner policy, will reduce the overall premium. Obviously the insured will be responsible for the deductible portion in the event that a claim arises, but some carriers will even go further and separate the expense costs (the costs associated with defending the claim) from the indemnity costs (the damages the insured becomes legally liable for as a result of a jury verdict, settlement, etc). The benefit of this to an insured is that sometime they can opt for an indemnity only deductible, which means the insurance company will start paying defense costs from the first dollar and money won't come out of the physician's pocket until actual damages are awarded. With an indemnity only deductible, essentially the insured will reap the lowered premium of the deductible but not have to pay the expenses to manage frivolous lawsuits that might be dismissed with no indemnity payment.

Limits of Liability

At the risk of stating the obvious, physicians should make sure to purchase policy limits that meet any requirements set by the state where they practice. It's also important to see if expenses reduce the limits of liability. It is always preferable to have the expenses fall outside the limits because the amount available to pay claims will not be eroded by legal fees, court costs, or other non-indemnity payments.

Conclusion

While it is easy and tempting to make insurance purchasing decisions on price, more often than not "you get what you pay for." In the end, you have to feel comfortable that you are being treated fairly from the perspectives of price, service and coverage. Take the time to see what services the companies offer in addition to claims handling to make sure you're getting the most comprehensive protection possible because worrying about malpractice coverage shouldn't be a distraction from delivering the best care possible.

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