A GUIDE TO PHYSICIANS PROFESSIONAL LIABILITY INSURANCE

Cunningham Group
www.cg-ins.com
Advanced Insurance Partners, Inc.
www.surgerycenterinsure.com

CHOOSING THE RIGHT INSURANCE CARRIER

Selecting a professional liability insurance carrier can be a difficult undertaking. Unless a physician is familiar with the different types of companies and coverages and how to evaluate an insurer's financial strength, the task can be daunting.

This booklet is intended to assist you in becoming familiar with the various facets of the marketplace and types of policies and to, hopefully, provide you with the knowledge and criteria necessary to make an informed and intelligent purchasing decision.

TYPES OF COMPANIES

There are several types of insurance companies and other sources for purchasing medical malpractice insurance. The most common are described below:

Physician-owned carriers: Owned by the physician-insureds of the company. Most states at one time had access to a physician-owned company. However, in the last few years many of these companies converted to publicly traded stock companies.

Commercial carriers: Owned by stockholders.

Risk Retention Groups: Formed as an insurance company under the Risk Retention Act of 1986, must follow the insurance laws of at least the state in which it is domiciled. A capital contribution is generally required when joining a risk retention group.

Risk Purchasing Group: An association of insurance buyers with a common identity who join together to purchase insurance as a group.

Joint Underwriting Association: A JUA is a state-sponsored insurer of last resort for physicians unable to obtain coverage from another insurer. Policies are generally assessable by the insured and/or all casualty insurers operating in the state.

When choosing an insurance carrier, physicians should inquire as to whether or not the company is regulated by the state in which they practice and if they are eligible for coverage under the state guarantee fund in the event of insolvency of the company.

TYPES OF COVERAGE

Although most physicians' professional liability coverage is written on a claims-made basis, other forms of coverage are sometimes available. Physicians need to understand the fundamental differences in these policy types.

Claims Made Coverage: This type of policy covers a physician for incidents that *take place and are reported* to the company after the initial date of claims made coverage *(retroactive date),* as long as the policy is still in force.

Because claims made insurance only provides coverage for incidents reported while the policy is in force, upon termination of a claims made policy, a physician needs to purchase extended reporting (tail) coverage. This assures that insurance coverage will be provided for claims that arise after the termination of coverage for incidents that occurred while the claims made policy was in force.

Another option to purchasing tail coverage is to purchase prior acts (retroactive) coverage when converting insurance coverage from one insurance company to another.

Many insurance companies have provisions for free tail coverage in the event of death, disability or retirement from the practice of medicine. In addition, the terms of tail coverage can vary greatly from one company to another, some offering a limited number of years for reporting claims and others an unlimited reporting period.

Before purchasing a claims-made policy, physicians should be certain the right to purchase tail coverage is guaranteed. In addition, because of the long-tail nature of medical malpractice, they should seek to obtain an unlimited tail reporting provision.

Because of the nature of claims made insurance, premiums in the first year of coverage are substantially lower than for subsequent years or the traditional occurrence type insurance. The premium gradually increases over a period of years (4 to 7 depending on the company) until a mature claims made premium is reached, exclusive of rate increases for other reasons, such as loss experience. At the mature level, premiums then change only if the company adjusts premiums overall due to claim experience.

Occurrence Coverage: An occurrence insurance policy covers a physician for any incidents that occur while the policy is in force, regardless of when a claim is made or reported.

Because of the nature of occurrence coverage and the long-tail nature of medical malpractice, premiums for occurrence coverage can be substantially higher than for claims made. Since economic damages can increase dramatically between the times an incident takes place and the claim is made, it becomes difficult for companies to adequately assess the impact of inflation and other factors that affect claim settlements and judgments. This can cause companies to cautiously set premiums higher than need be or to jeopardize their financial stability if premiums are not adequate. Most insurance companies no longer offer occurrence type medical malpractice insurance, preferring the perceived more stable claims made form.

IMPORTANT FEATURES TO CONSIDER WHEN LOOKING AT A MEDICAL MALPRACTICE INSURANCE POLICY

Consent to settle clause – ideally the final decision to settle a claim rests with the insured with no penalty assessed.

Defense Costs – ideally defense costs are outside of the limits of liability and will not reduce the amount available for indemnity payments.

Claim Trigger – on a claims made policy a report of an incident should trigger coverage even if no claim or demand has been made.

Extended Reporting Endorsement (Tail) Provisions – a claims made policy should include the right to purchase tail, at a known cost, when certain conditions are met, as well as the provisions for a free reporting endorsement in the event of death, disability or retirement.

CRITERIA IN SELECTING A PROFESSIONAL LIABILITY INSURER

When choosing an insurance company to protect your practice and your assets, the financial stability and long-term viability of the company should take priority over all other criteria.

With the growing list of insolvent medical malpractice insurance companies over the past few years and the more recent ratings downgrades of others, it is essential that physicians evaluate a company's financial management, underwriting standards and ratings. ***Although premium is a major concern when purchasing malpractice insurance, it should not be the only concern, nor should it be the major determining factor.*** In fact, a low premium should, perhaps, raise a red flag regarding the company's long-term financial stability. *If something seems too good to be true, it usually is!*

To determine if a company has the financial resources to meet its current and future obligations to its policyholders, several factors need to be examined:

Surplus: Surplus is the amount by which a company's assets exceed its liabilities. This is the net worth of the company and determines its ability to assume risk and pay for unanticipated deficiencies in loss reserves.

Net Written Premium: This is the amount maintained by the company after it has paid for reinsurance.

Loss Reserves: This is the amount set aside for indemnity payments and loss adjustment expenses for open claims.

Ratios: The ratio of net written premiums to surplus indicates the company's ability to assume risk. Regulators suggest a ratio between 1:1 and 3:1. The closer to 1:1 the stronger the insurance company.

The ratio of loss reserves (indemnity and expenses) to surplus indicates the company's ability to cover unanticipated reserve deficiencies. The recommended ratio is 4:1

The loss ratio is the total amount of incurred losses (indemnity and expenses) as a percentage of earned premium. The expense ratio is the total amount of operating expenses as a percentage of earned premium. A combined ratio (loss and expense) of more that 100% in any given year indicates an unprofitable year and a need for some type of adjustment to reduce the combined ratio and return to profitability.

Ratings: A.M. Best Company is the leading independent analyst of the insurance industry. A.M. Best analyzes the financial and operating strength of insurance companies and awards ratings that range from "A++" (Superior) to "C-" (Weak).

Other rating organizations to consider are Duff & Phelps, Moody's, and Standard & Poors'.

DISTRIBUTION

There are basically three outlets that malpractice insurers employ to distribute their products:

Direct Writers: These companies market and sell their products directly to the public using in-house agents/producers. Their employees also perform the day-to-day customer service functions.

Captive Agents: These agents are appointed by the company to market and sell their product exclusively. They are generally prohibited from representing any other companies. Customer service functions are performed by the agents and their employees.

Independent Agents: These agents contract with the various insurance companies to market, sell and service their products. Some independent agents will represent only one insurance company while others will represent a number of or all of the companies writing coverage in their state(s).

Some direct writers also employ the services of captive and/or independent agents. The premium for any given policy would be the same regardless of the distribution source. There are no additional costs or fees attributed to purchasing a policy through a captive or independent agent. The insurance companies pay a portion of the premium to the agent as commission for the sales and service functions performed by them.

One of the drawbacks of purchasing coverage directly from a company or from a captive agent is the lack of alternatives and objectivity available from these sources. Since the in-house agents and captive agents represent only the company that employs or appoints them, they are unable to provide an objective, unbiased comparison to other companies or to provide coverage from another that may be better suited to a particular physician.

The independent agent that represents many or all of the companies offering this coverage is able to provide an objective comparison and analysis of the companies and their products, offer alternatives and recommend the company and insurance coverage that best meets the needs of individual physicians and group practices. Since no company can be all things to all people, this is an important consideration when choosing a distribution method.

IN SUMMARY,…

To summarize, some of the important factors to consider when evaluating a malpractice insurance company include the insurer's financial stability, performance record and long-term commitment to the marketplace.

Financial Stability: An insurer should maintain sufficient capital and underwriting and pricing discipline to protect it from insolvency. The rating agencies and the company's annual report are the best tools to use to evaluate this aspect.

Performance Record: A professional liability insurance company should be licensed and admitted in the state in which it is providing coverage. This will assure that they are being regulated by the state department of insurance, which can provide information regarding its compliance with state insurance laws and regulations as well as about any complaints lodged against the company.

Long Term Commitment: An insurance company should be experienced in the underwriting and claim handling of medical professional liability insurance and committed to a continued presence in the marketplace.

As an independent agents, Cunningham Group & AIP are in a position to assist you in evaluating the insurance companies and policy features available to you. We have been specializing in medical malpractice insurance for over 20 years and represent all of the top-rated insurance companies. In addition to placing your coverage with a quality insurance company and providing you with top-notch service, we will continue to monitor changes in the marketplace to be sure you are getting the best coverage available at a competitive rate.

NOTES:

REFERENCES:

Illinois Department of Insurance

Springfield IL 62767
Michael T. McRaith, Director of Insurance
217-782-4515
http://insurance.illinois.gov/

A.M. Best Company
Oldwick NJ 08858
908-439-2200
www.ambest.com

Duff & Phelps, LLC
Chicago IL 60606
312-697-4600
www.duffllc.com

Moody's Corporation
New York, NY 10007
212-553-0300
www.moodys.com

Standard & Poors
New York, NY 10036
212-438-2400
mailto:ratings_request@standardandpoors.com

(10-09 REV)