



Will Your Malpractice Coverage Help Protect You in the Event of a Government Audit?

Recently, I have been involved in a disappointing experience concerning Malpractice Insurance coverage for a group of two physicians. Upon a situation that developed, this small physician group learned that they were not adequately covered and it was a devastating experience for all involved.

While researching the topic, I found several pieces of interesting information I hope might be valuable to those of you who rely upon BC Advantage Magazine for up to date information on what is going on in the “real” practice world. Perhaps a review of such a situation can help prevent you and your physicians in the practice from having to go through a financial hardship. This article will concentrate on malpractice insurance and questions you should ask when deciding on a carrier and on the details of coverage.

What are the responsibilities of the Insurance Agent?

Medical malpractice and other insurance is sold directly by an insurance company, by an agent representing one company, or an independent broker that sells products for several insurance companies. According to Arthur J. Gallagher & Co., “Understanding the various types of coverage available is crucial to ensuring you have sufficient protection in the face of potential claims.”

Since the terms used for medical malpractice coverage is detailed and often confusing, it

is imperative that physicians, other healthcare providers, and their staff be able to rely on the knowledge and experience of the insurance agent who is selling the policy(s). Physicians are asked to place their signatures on several pieces of paper each day. That necessitates that a responsible person in the office understands exactly what is contained in the documents being signed in order to ensure the providers are aware of any consequences of placing their name and accepting the provisions of the document(s). We rely to a large extent on our advisors/agents in the insurance industry to provide the pertinent facts concerning the physician's Malpractice Coverage before they sign on the dotted line.

Legal responsibilities of the insurance company and the insurance agent vary by state law. In Texas, for example, one article states: "It is established in Texas, that an insurance agent who undertakes to procure insurance for another owes a duty to a client to use reasonable diligence in attempting to place the requested insurance and to inform the client promptly if unable to do so." *May v. United Serv. Ass'n of America*, 844 S.W.2d 666 (Tex. 1992).

Of course, in a court of law, there have been rulings upholding this standard and others that found on the part of the agent, depending on the particular circumstances of the case.

For any individual that is not knowledgeable concerning the detailed information found in the insurance declaration of coverage and exclusions, I am sure all agree that we have to place trust in our insurance agent or broker and the insurance company.

There are crucial questions, however, that must be asked by the responsible individual in the office when securing adequate Malpractice insurance coverage or upon renewal of the policy in force.

The following are a few of the questions that should be analyzed when performing this task

involving Medical Malpractice insurance:

1. *Has your organization made changes?*

For example, many solo practices are expanding or joining with larger groups or organizations. Make sure that your individual providers are covered as well as any other entities in the group.

2. *Have you hired Non-physician practitioners?* While these providers may have their own insurance, are you also protected under your coverage for claims? Also, you need to report if a provider has left the group and let your insurance carrier advise you on any changes that need to be made.

3. *Have you added services to your practice that were not included on the original application?* Perhaps you have added ancillary services outside the scope of your specialty. It is strongly advised that you always report any new services to the Malpractice carrier and discuss, before provision of such services, any potential risks or gaps in your current coverage.

4. *Have you added any sub-specialty accreditation that you may have earned that has not been reported to your malpractice company?*

For instance, are you performing new procedures or have you discontinued to provide some services that were listed originally on the application?

5. *Have you moved and need to report a new address? Do you also need to update your contact information?*

6. *Have you taken advantage of any newer products being offered by your Malpractice insurance company?*

- One of the largest Malpractice carriers in Texas states on its website that it was the first "to include Employment Practices Liability Insurance (EPLI) coverage at no additional charge." This coverage provides protection up to stated limits and parameters against any alleged wrongful employment

practices, any violation of any federal, state, local, or common law prohibiting any kind of employment-related discrimination, as well as other protection against claims for harassment, abusive, or hostile work environment actions, etc. Are you aware of any such coverage available under your Malpractice policy?

- This carrier also offers Medical Director Coverage to protect physicians serving in such role for a cost of around \$200-\$300 per policy period for coverage limits of \$100,000.
- Some policies include limited professional premises liability coverage within stated limits per policy period.
- Some Insurance companies provide indemnity and defense coverage to a substitute physician (Locum Tenens) for up to 30 days per policy year without additional premium.
- Cyber Liability insurance can be a valuable product to have as we become more electronic in the sharing of healthcare information.
- And lastly, will you be covered in the event of a government audit under Med Defense coverage?

Therefore, performing an annual insurance review can become vital to the financial well-being of your practice and your physicians.

While consulting with a client who just went through a ZPIC audit resulting in a large refund request, the physicians wanted to take advantage of the new Medical Defense provisions available under their Malpractice insurance policy only to find out that their Insurance carrier would not cover them because the audit letter was addressed to the practice name and not the individual physician. Each Physician has their own individual policy; however, they did not have a separate group policy. Since

the ZPIC letter was addressed to the group and not to each individual physician, the Malpractice Carrier would not cover the claim, stating that the group was not an insured.

What agent or insurance company would sell coverage that did not cover the organization and all physician/providers?

Upon research, I found that in most instances, a solo physician who also has an entity under which they bill (e.g., Professional Association (P.A.), etc.), the coverage is automatically included. In instances where there is more than one physician in the group, entity coverage is usually added at a cost of 10% of the individual coverage.

That did not happen in this case and the physicians received a letter from the insurance carrier of non-coverage for the entity and had to pay thousands of dollars out of their pockets. Now how many physicians are out there working with just an individual policy and think they are covered at 100%? How can they possibly be expected to know that?

Unfortunately, these types of struggles seem to continue on a daily basis; with everyone wanting to audit everything we do, it is very important that we make sure we protect our physicians. Therein is the challenge for all of us who love the healthcare industry—to continue to support our physicians by ensuring that they have the information needed to protect them in such situations!

Maxine I. Collins, MBA, CPA, CMC, CMOM, CMIS

Director of Audit, Compliance & Education at CoreMDPartners, LLC; and

Shirley Kretz, COO, CMOM,

Vice-President of Operations at CoreMDPartners, LLC.

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