

Entity-Employed Physicians and Medical Malpractice Coverage Issues



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Physician employment by hospitals and medical facilities continues. The change from independent to employed physician status has been rapid and all indications suggest that the trend will continue. As noted in a recent Wall Street Journal article, 70% of doctors had independent practices in 2006; now, less than 50% do. The majority of today's doctors work in offices owned and operated by hospitals and, if this continues as expected, private practices will be a rarity within the next few years.

The practice of employing physicians has serious implications that need to be understood and addressed when purchasing Medical Malpractice insurance. In our experience, clients have often expressed confusion about insuring individual doctors in relation to hospitals and other healthcare entities. With the recent movement toward entity-employed physicians, it is even more important to understand how insurance coverage will apply for both the entity and its employed physicians.

Historically, the Medical Malpractice market could be divided into two broad categories: 1) insurers who specialized in entities and 2) insurers who specialized in individual doctors. Insurers for each category wrote policies specifically designed to address the unique exposures of their type of insured. For example, an entity policy would contain an exclusion for doctors. In our complex environment today, that categorical split doesn't address healthcare organizational structures. And so, entity policies can now cover the entity itself, its employed physicians and, in some cases, even non-employed physicians. It is up to organizations to determine how to handle their specific exposures. However, it is important to address several key issues in the decision-making process in order to avoid unintentional limit inadequacies, coverage gaps, or deductible issues.

Limits of Liability

All Medical Malpractice policies, whether covering an entity or individual doctor, include a limit per incident or claim and an annual aggregate for all claims. These limits apply per policy. If each

employed doctor were to buy a policy, there would theoretically be much a much higher total limit of liability; 200 doctor policies, each providing \$1,000,000 limit of liability, would result in an aggregated limit of \$200,000,000. If an entity were to include coverage for 200 doctors under its own policy, how would this difference be factored into the program? The key to successfully addressing this question is to look at the total entity limit within the context of the combined exposures of the entity itself and the number of covered doctors. With some credible exposure and loss information, actuaries can help an entity define the appropriate overall limit. Typically, an entity is going to buy significantly more in total limits of liability than an individual doctor. This includes a much higher limit per incident or claim, which means more coverage for the employed doctors as well. If doctors are insured under the entity's policy, it's important to periodically review the number of covered doctors and total policy limit. As more and more doctors are added to the entity's insurance, the organization should consider additional insurance to cover them.

Defense Coverage

There are clear advantages to covering the entity and employed physicians under the same policy. Medical malpractice incidents typically include allegations against the entity and specific physicians. If they are insured together, a coordinated or combined defense should result in a smoother, better controlled, and less expensive claims process, as well as an overall lower claim value. In contrast, defense costs can be a factor in an insurer's approach to claims adjustment for an individual doctor's policy. In some instances, they will offer the policy limit or concede early in the claims process in order to mitigate potentially large claims-handling costs. (Costs for claims handling are typically in addition to the limit of liability; paying the policy limit ends the insurer's defense obligation.) One result of this approach can be larger claims payments than necessary.



Consent to Settle Claims

There is a significant difference in the Consent to Settle Claims clause of Medical Malpractice policies for doctors and entities. Under a doctor's policy, the physician must consent to the terms of a settlement before the insurer can make the offer to the claimant. Since doctors are extremely concerned about protecting their reputations, this clause provides a strong measure of control for the individual doctor. In contrast, policies covering an entity generally contain no such provision, which may be a concern for your employed doctors. We recommend dealing with this sensitive issue early in the decision-making process. In our experience, it is essential to communicate the overall coverage advantages of an entity policy to the employed doctors, which include the benefits of a combined defense, higher limit of liability per incident, and the probable lower insurance costs associated with an entity program.

Risk Management Services

Another difference between doctor and entity policies is risk management services. Individually-procured doctors' policies are often written by specialty insurers who provide excellent, value-added risk management services. In contrast, entity insurers do not automatically provide this service and the entity will need to consider alternatives. However, we have also seen an increase of clinic-specific loss control services offered by entity insurers. Sometimes the organization has sufficient in-house expertise and staff to support its own risk management program. Other options? Risk management services can be purchased separately, perhaps even through an insurer who specializes in individual doctor coverage. Another possible choice is your insurance broker, who may have the capability of providing these professional services.

“Pesky” Policy Provisions

After having convinced doctors to join its insurance program, an entity doesn't want to be in the position of explaining to a doctor why an incident is not covered. It's important to clearly understand the provisions of your policy and to address potential areas of concern before a loss occurs or a problem develops. First, determine how your policy identifies

covered doctors. Is there blanket coverage for all entity-employed doctors? Or does each doctor have to be specifically scheduled on the policy, necessitating individual additions and deletions during the policy term? What are the policy terms and premiums for “tail coverage” as individual doctors leave your program? This should be negotiated with the insurer upfront in order to avoid escalating or unexpected premium increases over the long term.

Total Cost of Risk

Given economies of scale, an entity policy should be less expensive than separate doctor policies. However, factors beyond premium should be taken into consideration when choosing your coverage. Entities are often able to handle higher retentions or deductibles before they transfer the balance of risk to insurers. In contrast, individual doctors are not able to do so and require smaller retentions or deductibles. How will you factor retained losses into your overall program? Directly allocating large retentions or deductibles to your doctors may put an unreasonable financial burden on them. In our opinion, you need a professional, experienced risk consultant to help you navigate through this issue and any others that comprise the total cost of risk labyrinth.

As you move forward in this new environment, rely upon your insurance broker or consultant to make sure that each of these issues has been properly addressed. The members of Parker, Smith & Feek's Healthcare Industry Practice are well-versed in these issues and available for consultation.