

Be Aware and Be Involved! – What to Consider When Your Employer Purchases Professional Liability Insurance on Your Behalf

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If you are deciding to become an employee of a hospital or physician group, and your new employer is purchasing professional liability insurance on your behalf, there are potential risks that can arise if you are not an active partner in the choices being made. You need to find out, “What kind of insurance is being purchased to protect me?” This article will assist you in your due diligence process by offering a list of questions you should ask, as well as potential scenarios to consider.

Is the insurance coverage limited to the professional services I perform on behalf of my new employer? When you are insured under a hospital’s policy, coverage is typically limited to professional services you perform within the scope of employment in the conduct of the hospital’s business. Should you perform professional services outside of your employment, your coverage may not extend to those situations.

What are my limits of coverage? Are they sufficient? Are they being shared with other physicians and/or an institution, or are you being provided with individual limits of insurance coverage dedicated solely to your protection? If you are insured by a New York State admitted insurance carrier and have primary policy limits of liability in the amount of \$1,300,000/\$3,900,000 (Each Person/Total), then you satisfy one of the basic requirements for the New York State Section 18 “free” excess limit of coverage, which provides an additional \$1,000,000/\$3,000,000 limit of coverage. Although a risk retention group (RRG) or a non-admitted insurance carrier may provide an individual limit of coverage, you will not be eligible for this additional limit of coverage.

What is the form of coverage being purchased? If you are currently insured on an occurrence basis, you should understand the differences between the occurrence and the claims made forms of coverage, particularly if your employer chooses to purchase claims made coverage on your behalf. A reporting endorsement or “tail” is required to cover any claims that are reported after the termination of coverage for incidents or allegations that occurred between the “retroactive date” of the claims made policy (may be the date of employment) and the termination of coverage (may be the date employment ceases). It is important to know from the beginning whether it is you or your employer who will be responsible for the purchase of the *tail*, should the relationship cease. All too often, a physician is left unprotected for this *tail* exposure.

(For more information about claims made vs. occurrence coverage, go to our Web site at www.mlmic.com and click on Underwriting – Physicians and Surgeons – Claims Made vs. Occurrence.)

Who makes decisions about the continuation of my insurance coverage? Are there any underwriting requirements to remain eligible for insurance coverage with your new employer? What if you incur losses and/or defense costs in the new insurance program?

Under what circumstances may you be cancelled or non-renewed? Will you be given adequate notice? Is there a peer review process? Are there any limiting endorsements, deductibles, or unusual exclusions in the coverage being provided of which you should be aware? Do you have the right to consent to the settlement of a claim against you? You should ask for a copy of the insurance policy and have a professional review it carefully.

Is my new insurer regulated? What is my insurance company's current financial condition and its plan for long term stability? Will my insurance company be there when I need it?

You and your employer should understand that there are disadvantages to being insured by an RRG or an insurance company that is not admitted in New York State. Those companies are not subject to the New York Insurance Department's regulation of insurance rates, rules, or policy forms. As such, their premium costs may be low initially, but they can become substantially higher at future renewals when compared with the premium rates of a New York State admitted insurance company. Further, with non-admitted carriers, the cost of the *tail*, or reporting endorsement, is not regulated and, therefore, there are no limits on what may be charged for such protection. Since policy terms and conditions are also not regulated, provisions contained in the policy may not be as protective as those offered by an admitted carrier, particularly as they relate to the claims made provisions in the policy.

In the event of insolvency of a non-admitted insurance carrier, or an RRG, there is no protection afforded to you or your employer by New York State's Insurance Security Fund, a/k/a the Guaranty Fund. Some insurance carriers require a capital investment and/or assessments should their loss experience and financial condition deteriorate. You need to know, in advance, what your liabilities will be, in the event that your insurance carrier becomes bankrupt or insolvent.

(For more information about Risk Retention Groups, go to our Web site at www.mlmic.com and click on Dateline Newsletter, Winter 2008, *Underwriting Update RRGs: Weighing the Risks*)

How does my employer's financial condition affect my medical professional liability?"

Aside from the obvious outcomes, should your employer become insolvent or cease operations, your employer may be unable or unwilling to purchase the appropriate *tail* protection for you, if your coverage is written on a claims made basis. Whether you have an individual policy, or are covered under the institution's policy, a *tail* or reporting endorsement is required to insure your liability for future claims and suits that may be brought after a claims made policy is cancelled or terminated.

Some other important insurance considerations:

- Ask your new employer if you have the option of continuing your current coverage with MLMIC. As an admitted carrier in the state of New York, MLMIC's rates, rules, and forms are regulated by the New York State Department of Insurance, and MLMIC is protected by the state's Guaranty Fund.
- Your current individual professional liability policy may remain in force and be managed and paid for by your new employer, subject to underwriting review of any changes in the professional services you may be providing for your new employer. With an individual policy, you can retain your right to consent to settle a claim made against you. You will also be eligible for the additional Section 18 Excess Insurance limit, provided the basic program requirements are met.
- You have the option of continuing your current mature claims made policy, whereby your new employer agrees to maintain the years already invested in the claims made program, so that you will remain eligible for a free *tail* when you retire, or if you become disabled (subject to the terms and conditions of the policy).

For answers to any of your other questions, please contact one of our Underwriting Managers at the following locations: Syracuse Office - Ms. Amy Herendeen at 315-703-7218; NYC Office - Mr. Robert Pedrazzi at 212-576-9893 or Latham Office - Ms. Stephanie Waxman at 518-786-2740.