Understanding Your Medical Professional Liability Insurance Policy

A GUIDE TO THE BASICS – PART II

By Megan K. Packard, Professional Liability Solutions, LLC

Understanding your medical malpractice policy needs to be a priority at the time you select your insurance carrier and your particular policy. However, as I mentioned in Part 1 of this two-part series, most healthcare providers have limited knowledge of their policy unless they face a malpractice claim. In Part 1, I went over the differences in types of policies (claims made vs. occurrence), types of insurance markets (standard vs. surplus), and touched on the components that make up a policy, along with the implications of the limits of liability. To further expand on the basics, this follow-up article will continue to define and describe many important aspects of a malpractice policy.

To the majority of healthcare providers, the most familiar piece of the malpractice policy, and really any type of insurance policy, is the premium. The premium is the amount the insurance company charges for the duration of the policy period, in most cases for a 12-month time frame. Premiums are developed based on the insurance company's rates. Rates are based on calculated predictions of the future, using the past claims experience as a guideline. Premium amounts vary from physician to physician and are dependent on claims history, specialty, geographic location, and other aspects unique to each individual risk. One of the most important factors in determining the premium is the expected claims expenses the company will incur to defend a particular physician and pay the injured patient(s). Also taken into account are factors such as the necessary expenses to run the company and provide policyholder services, contingencies, profit, and investment income.

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As mentioned in Part 1, the standard insurance carriers must establish rates on which they base

their premiums, and then file these rates with each state where they are authorized to write malpractice as an admitted insurance company. The state's Department of Insurance is able to closely analyze and monitor the rates. The surplus insurance companies, on the other hand, have more flexibility to make changes to rates without going through the state's Department of Insurance. The surplus carriers have the flexibility to create rates acceptable to insure the risks the standard companies simply cannot, or will not, insure. While surplus carriers do not have to file their rates with the state's Department of Insurance, they must establish eligibility to write policies in that particular state by demonstrating financial soundness and meeting other consumer protection requirements.

As with many purchases in life, cost is often the number one deciding factor. In malpractice insurance, though, factors besides cost should be taken into consideration when selecting a policy. Premiums are not always guaranteed. Some policies have an audit rate, which means they may charge an additional amount at the end of the policy period or upon renewal of the policy. For example, the insurer may base the premium on a set number of patient visits and then provide a specific dollar amount per visit in excess of the stated "threshold." Other companies that offer low premiums may assess all policyholders or ask them for capital contributions at a later date. Many do this because they have not charged the appropriate premiums to cover their financial obligations, such as paying out claims. If there are not enough capital reserves to meet financial obligations, then the company may become financially insolvent (bankrupt) and leave the insured scrambling for coverage. If this happens, it does not matter what a great rate you received for insurance, as you may be left without a policy and a gap in your insurance history, which can affect securing future coverage.

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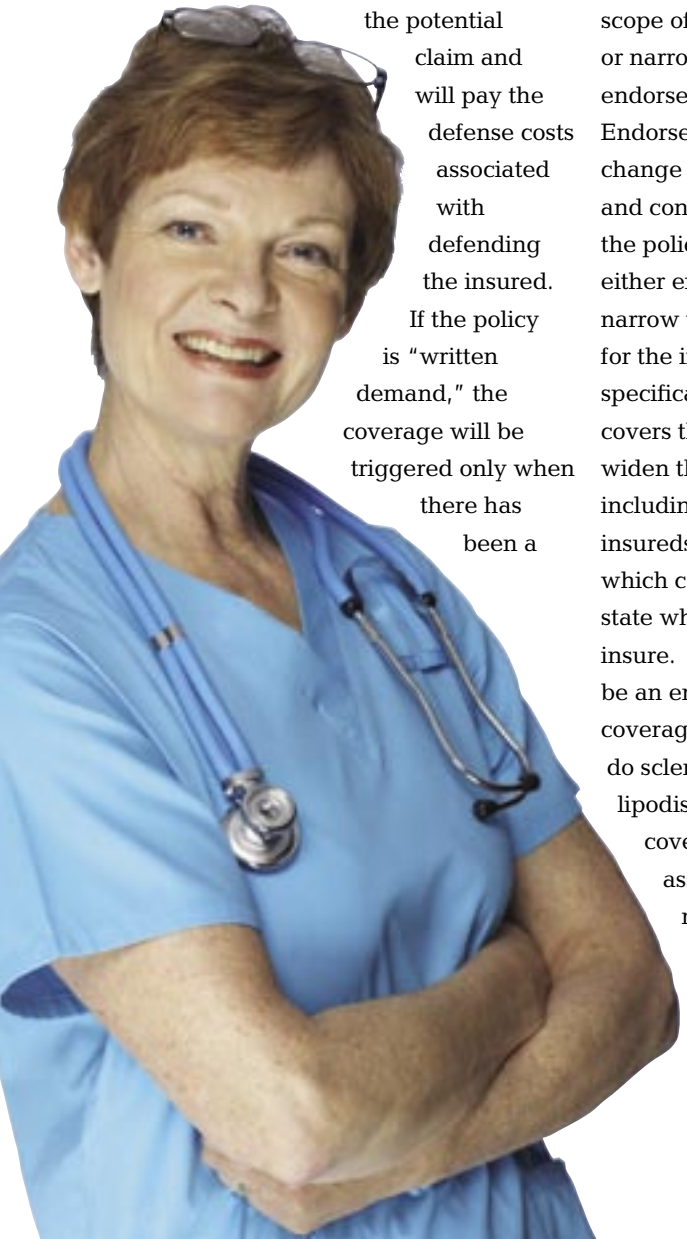
Another aspect that varies among policies is the presence or absence of a deductible. Typically the standard carriers do not have deductibles, while the surplus carriers do. Higher deductibles can lend to lower premiums, although it is not usually a drastic drop in cost. Policies that do have a deductible may require the deductible to be paid when a claim is made and the insurer begins to incur expenses on behalf of the insured to defend the insured ("claims expenses"). Or the policy may require the deductible to be paid for both claims expenses and indemnity separately. This means that the deductible must be paid by the insured when the carrier defends the claim, and paid again if any monies are paid out in damages. Again, knowing the specifics of your policy is crucial to understanding what you will be faced with when a claim arises.

In order for the insurance policy

to go into effect, coverage must be triggered in one of two ways. Some policies are "incident sensitive," while others are "written demand." "Incident sensitive" policies allow the insured to contact the insurance company when an event has occurred which the insured feels could result in a future malpractice claim, even if there has not been a demand for money or services, including the service of suit or institution of arbitration proceedings. The carrier can begin investigating the potential claim and will pay the defense costs associated with defending the insured. If the policy is "written demand," the coverage will be triggered only when there has been a written demand for money or services or written notice that a "medical incident" may result in a demand for money or services or a service of suit, or notice of initiation of arbitration has been served to you. Understanding what your policy allows will help you to know how and when you can report a claim to your carrier.



The policy itself is general in nature and states that coverage is for the healthcare provider for his/her professional services rendered or the failure to render services. The scope of coverage can be expanded or narrowed according to policy endorsements and exclusions. Endorsements change the terms and conditions of the policy. They can either expand or narrow the coverage for the insured. Endorsements can specifically state what the policy covers the insured for, as well as widen the scope of coverage by including additional procedures, insureds, or locations. Exclusions, which can be added by endorsement, state what the policy does not insure. For an example, there may be an endorsement which expands coverage to allow a physician to do sclerotherapy, mesotherapy or lipodissolve, but specifically excludes coverage for any physician's assistant, nurse practitioner, or registered nurse doing such procedures.

In addition to covering the negligent act, error, or omission of the insured, the exact coverage may be more narrowly defined to include the specialty (procedures within the scope of that specialty), types of claims (some include claims against your license), territory, and many others. While some policies follow the provider anywhere, the territory may be defined by specific states or exact practice address locations. For example, if you have a policy with a location restriction, your policy only covers you for malpractice claims that arise out of rending, or failure to render, professional services in that particular location. Some providers mistakenly think their coverage follows them wherever they go and for whatever they do. This is not always the case. For example, a physician who owns and operates a medical spa may only have coverage for claims arising from acts, errors, and omissions that occur within the medical spa facility and not from claims that arise elsewhere. It is extremely important to know what you are being covered for and where you are covered.

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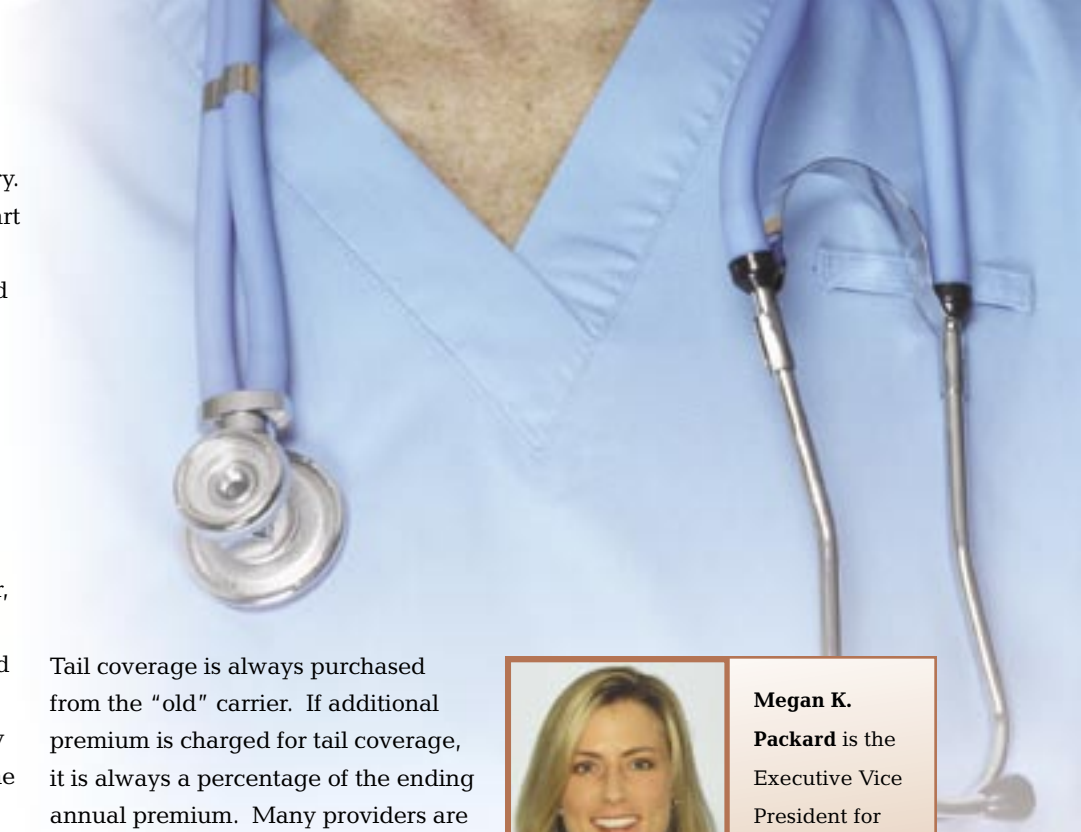
In addition to coverages, providers should also know whether the policy provides the insured the "consent to settle." "Consent to settle" provisions define the terms under which a settlement might be agreed upon by the insurer and the healthcare provider. Having the consent to settle ultimately can provide the insured



greater control over their claim history. A claim settlement does become a part of that provider's claim history and can affect professional reputation and the ability to secure future coverage. While some policies provide the insured the right to consent, many do not include that provision, or they include it with limitation. Consent to settle with limitation, also known as a "hammer clause," provides the insured the right to consent; however, if the insured does not consent to the recommendation to settle, the insured could be responsible for ongoing defense costs and the amounts of any verdict that exceeds the amount of the recommended settlement.

Lastly, for those healthcare providers who have a claims made policy, knowing what options are available to extend the reporting period in which claims can be made after the expiration, or cancellation, of the policy is important to continue to protect them after they no longer have an active policy. Extended reporting endorsement ("tail coverage") options can range from one year to unlimited/lifetime. This may require additional premium and is purchased when a claims made policy ends and the new policy does not pick up prior acts. Tail coverage may also be selected in the event of retirement. Tail coverage is always purchased from the "old" carrier. If additional premium is charged for tail coverage, it is always a percentage of the ending annual premium. Many providers are comfortable aligning the length of tail coverage with their particular state's statute of limitations.

Understanding your malpractice policy is complicated, yet critical to your career. There is great importance in knowing the basics and the resulting implications because in selecting a policy it is not about the here and now, but rather the future when a claim is made against you. So, think of the "what ifs" before a claim occurs. Seek knowledge first before you find yourself in a position where you wish "if only I had known." It is in your best interest to understand your policy now. Then, at the time a claim is made, you can spend less time consumed with the ins and outs of your policy and its ramifications, and more time doing what you love - practicing medicine.

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Megan K. Packard is the Executive Vice President for Professional Liability Solutions, LLC, an independent agency that specializes in providing personalized, comprehensive insurance and risk-management solutions for healthcare professionals. With offices in both Charlotte and Chicago, Professional Liability Solutions has been helping healthcare professionals protect their practices and assets for over 15 years. Megan works from the Charlotte office, where she focuses her business on the medical spa, aesthetic, anti-aging, and wellness segments of the healthcare industry. Megan received her degree from the University of Virginia. She can be reached by calling 800.372.3268, www.professionalliabilitysolutions.net, or by emailing her at mpackard@pls-medmal.com.