

Healthcare Market Update: Med Mal Occurrence is Back



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The reemergence of occurrence coverage is providing another option to the "option starved" professional medical malpractice buyer. Claims-made policies were preceded by occurrence-based policies, under which a loss is covered if the occurrence happens during the policy period, no matter when the insured is faced with a claim for damages. In the 1970s and 1980s, claims accelerated under occurrence-based policies that had long since expired for losses arising from exposures many years, if not decades, before any illnesses or injuries were diagnosed. Mired in complex litigation over the concept of occurrence, insurers began to issue policies that are triggered at the time claims are presented. As a result, claims-made coverage forms have been the predominant option offered, requiring a "tail" if there is a change in retroactive dates or a discontinuance of insurance.

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It was not that long ago when medical professional liability insurance was in a state of turmoil. Carriers were exiting the marketplace, selected territories were deemed "unacceptable at any price" and coverage terms and conditions were limited. This was happening in all parts of the country, but most broadly in the Mid-Atlantic and the Northeast. However, as with most insurance coverage, time does bring about change.

Everything old is new again. That is exactly what is happening in the world of medical professional liability insurance. William Gallagher Associates' Healthcare Practice has noted that a selected number of insurance carriers are offering occurrence coverage for professional medical liability insurance. The latest entry into this coverage expansion effort is AIG; a fact that confirms that the "crisis" of just a few years ago seems to be a thing of the past.

Both domestic and international underwriters have taken an exhaustive evaluation of the state of the US medical professional liability market and made the determination that this line of business is desirable again. They feel that they can profitably underwrite selected business in the long-term care, physician and many ancillary healthcare fields. And unlike prior soft markets, it appears as though carriers are making these determinations more carefully. While the appetite of several carriers, including AIG, One Beacon, CNA HealthPro, Lloyd's and numerous regional markets, has broadened, they are not simply offering terms to all applicants. Instead, there is noticeable demand for greater information regarding each submission. These markets are taking a careful look at the management of the organization, their commitment to quality, risk management and loss trends as they are making case by case underwriting determinations.

Just as the insurance market has matured, so have the buyers of medical malpractice coverage. While many still see the occurrence coverage as the preferred option, for organizations that have few, if any, historical losses, the claims-made option can offer significant cost savings with no less coverage. Claims-made coverage is often seen as offering less coverage than occurrence. This is an inaccurate statement. The necessity for a "tail" policy at the conclusion of a claims-

made policy (and only in cases where there is a change in the retro date) is an additional expense. The time value of money must also be considered.

Claims-made policies also have the advantage that chosen limits of insurance will be more appropriate for the litigation environment at the time of the case. While it may be comforting to know that an occurrence policy bought today may cover a claim made far into the future, today's limits of insurance and policy wording may be woefully inadequate in a difficult to envision legal world of say, 2018.

It should also be noted that many carriers are offering prior acts coverage in an effort to successfully acquire new business, or what is called "nose" coverage. This underwriting accommodation was nearly impossible to find in recent years. Yet, the increasingly competitive nature of the market has made this option a reality. This "nose" endorsement eliminates the need for a "tail" policy, further enhancing the cost savings offered with the claims-made coverage form.

It is not advisable to determine which coverage is best for a healthcare provider based on old stereotypical perceptions regarding claims-made or occurrence policies. As with any risk management decision, multiple factors should be taken into account to find the best possible option for each insured's needs. A careful analysis of the client's needs, loss history, risk profile and risk appetite must be undertaken in order to evaluate the best option.

On the whole, WGA is seeing a positive trend for the healthcare industry in the insurance marketplace. Not only are some markets offering the occurrence coverage, but terms and conditions are being expanded, deductibles levels often lowered and coverage flexibility is evident in the negotiation of final terms for the insured.

While there is no indication of a change on the horizon for this positive trend, a cautionary note must be sounded. The Property & Casualty industry, while currently maintaining more than adequate capital and surplus levels, is always subject to dramatic swings. Events on the world stage could have an extraordinary impact on the financial health of the industry and change the market abruptly. In addition, a failure to ensure meaningful "tort reform" could roll back reform efforts that have taken place in numerous states to encourage a more competitive insurance environment. That said, in the absence of a compelling impetus, this encouraging trend appears likely to continue well into 2008.

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