

Hospital Employment and Physician Liability Insurance Coverage

This white paper discusses how your medical professional liability coverage might change if you become a hospital employee, what this change would mean to you, and advises some points for you to consider and potentially address in the negotiation process.

Issue:

Physicians of all specialties are increasingly being sought for employment by hospitals, thereby foregoing control over their liability coverage and opting to be covered by the hospital's self-insured captive, or placed on the hospital's insurance policy. Declining reimbursement, increasing regulatory, and administrative pressures are making hospital employment an attractive option. It appears the employment trend is not abating and hospitals will continue down this path. According to recent American Hospital Association statistics, 25% of all active physicians are employed by a hospital, a 34% increase from 2000 to 2010.

As an employee, a physician no longer has the ability to make decisions regarding management of their practice expenses. Employee physicians eliminate their opportunity to determine whether they wish to defend themselves as a result of a claim, appeal a decision should a court not find in their favor, or if they should settle a claim. Almost all physician professional liability policies today include a "consent to settle" clause, which gives the physicians control and input as to whether their case should be settled or fully defended. Physician specialty carriers have built a wealth of knowledge, tools, and attorney relationships to help physician practices vigorously and successfully defend themselves in a claim or lawsuit.

As the employer, a hospital could decide to settle a case against a physician, or combine their defense with the defense of the hospital or other employees in a lawsuit. The physician will not be assigned their own defense counsel in these types of cases. A claim paid against the physician must still be reported to the National Practitioner Databank, state Board of Medicine, and other government or regulatory bodies requiring reporting. Unfortunately, there are many examples of physicians who, after leaving a hospital's employment, find difficulty in securing a new liability coverage because there have been claims in their name of which they had no knowledge. It can often be difficult for their new carrier to gain the necessary information needed from the hospital to underwrite the physician. Ceding control over this type of legal decision has the potential to negatively impact a physician's reputation and future insurability.

Is there a solution? Unless the physician continues to maintain their current coverage when becoming employed, a solution must be worked out between the physician and the hospital. We have successfully helped practices maintain their own liability coverage in an employment contract negotiation while providing solutions, risk management services, and expense control for the hospital.

It is important that a physician maintain the flexibility, continuity and protection of their own policy to protect their personal assets and reputation.

Physician Consideration As An Employee

Physicians are often not given a choice to maintain their liability coverage as part of an employment transaction. In doing so they lose the flexibility to maintain their own coverage and forego the continuity of coverage should they decide to leave the hospital's employment, or if they are discharged as an employee in the future. Additionally, the physician loses any control over claims decisions and how payments would be made, jeopardizing their reputation and public disclosure of claims actions in national and state databases. As noted earlier, the physician is at risk when leaving hospital employment as they could have difficulty in finding a carrier that will provide continued coverage from the hospital insurance program.

It is critical that a physician obtains clear and specific contract terms regarding the purchase, maintenance and termination of insurance coverage. It is possible that a physician will have difficulty identifying the cost of their coverage to them as an employee. This cost is either negotiated out of their purchase price when hired, or is expensed annually to them as an employee through their new employment payment structure. It is prudent to find out what the hospital will be charging and compare it to their current policy cost and coverage. Sometimes the cost of their current policy is lower than what the hospital will "expense" (i.e., charge), to the physician and almost always the physician's current policy coverage is far better than what the hospital will be providing.

Another cost and coverage consideration involves the purchase of "tail" coverage. Physicians have often earned a free "tail" with their carrier and it is critical to identify who will bear the cost of the tail as an employee when retiring, or if the physician should decide to part ways with being an employee of the hospital. Will the hospital charge back to the physician at retirement, or upon leaving, the cost of "tail." Additionally, it is important to identify what type of limits and how long the "tail" policy will provide coverage. For example we have seen some policies provide a free "tail", but only for 3 years after retirement. Depending on the type of practice, statute of limitations and age of patients seen, this could leave a retired, employed physician "bare" with no coverage in the event of a lawsuit that is filed after the designated time period of the "tail" runs out.

Where Physicians Give Control On The Professional Liability Decision

- Hospital Captives
- Hospital established RRGs – can write any physician, does not have to be an employee
- Physicians as employees – can have the hospital purchase their insurance
- Physicians leased - can have the hospital purchase their insurance

Key Questions For a Physician When Considering Employment:

Coverage:

- Who is responsible for purchasing the tail coverage from my existing carrier?
- What happens to my corporation coverage and prior acts?
- Who selects features for my new policy, e.g., limits, deductibles, and coverage?
- How do the policy terms compare with my current carrier's policy?
- Is my coverage only limited to my place of employment?
- Will the hospital cover any moonlighting or other outside activity?
- Will I get free tail coverage if I retire, die or become disabled?
- Will my employees be covered separately or named on my policy?
- If it is an occurrence policy what rights carry forward if I should leave employment?
- Who can change the policy, including the right to cancel?
- Will I continue to have coverage for regulatory actions, such as RAC Audits, HIPAA, STARK or Board of Medicine allegations?
- Is Volunteer coverage provided?

Cost:

- How is the premium determined and does it compare favorably with my current premium?
- How can I keep my current coverage and have this expense paid for by the hospital – or expensed from my practice?
- If there is a deductible when a claim is paid, who is responsible - is it deducted from my income?
- How is the premium allocated? Is it expensed against my income?
- Do I pay for tail coverage in event of resignation or termination?
- Is an employee's liability cost coming out of my income?
- If I leave, is payment required when tail is selected, or is it deducted from my income?

Defense:

- Will I still have any consent into claims settlement?
- Will I have a role/say in how my defense is handled?
- How am I represented if the liability is not mine and I'm sued along with the hospital?
- At anytime can I have my own defense representation?
- Can I obtain loss runs on a regular basis?
- If a claim is paid, who is responsible for reporting to meet state and federal reporting guidelines?

For more information on this subject, please contact:
Steve Fargis , Vice President of Professional Risk Associates
(800) 318-9930 or sfargis@profrisk.com