

# Reducing Risk

*A Publication on HealthCare Risk Management from Princeton Insurance*

## Risk Alert

### Medical Staff Credentialing Risk Update – August 2005

#### **The Importance of Credentialing and Its Impact on Your Organization**

Healthcare professional credentialing is one of the most significant responsibilities of a healthcare organization. An effective credentialing program assists the organization in assuring the quality and safety of patient care as well as minimizing the potential for liability. Effective credentialing is playing an ever increasing role in the defense of medical malpractice claims. And a major component of credentialing is the assurance of adequate professional liability insurance coverage of the medical staff. For this reason, we would like to share information with you regarding a very real issue that highlights the need for organizations to focus on the coverage component of credentialing.

#### **Potential Problem Area in the Credentialing Process**

In the past, assurance of medical malpractice coverage meant adequate per claim and aggregate limits of coverage. Now that assurance must be extended to include continuity of coverage. Because of changes in the accessibility and affordability of insurance coverage, some physicians are seeking cheaper policies and may be changing their policies or carriers. As a result, they may have selected, perhaps unwittingly, less than optimal forms of coverage that leave *gaps in coverage*, even though they have had a policy in force continuously during their practice. To be specific, some physicians with claims-made policies may not have appropriate “tail” or “prior acts” coverage, and that may leave you with an unanticipated financial exposure.

Problems arise when claims-made coverage is either voluntarily or involuntarily not renewed with the same carrier. To assure no gap in protection occurs between a policyholder’s original retroactive date and the effective date of the replacement carrier’s policy, a claims-made insured generally has two choices. By regulation, underwriters must offer their insured the right to purchase an endorsement or separate policy that extends the amount of time allowed to report claims after the policy’s termination date. Therefore, the policyholder may elect to purchase “tail” coverage from the retiring carrier, or buy “prior acts” coverage from the new carrier. When policyholders change carriers, they must weigh the cost of purchasing tail coverage against prior acts coverage. Factors that influence the physician’s choice include the expense of the additional coverage and the unwillingness of the new carrier to provide prior acts coverage at any cost due to significant known exposures.

Mistakes aside, you must consider that some physicians may have elected to go “bare” and not purchase either coverage. In essence, by going bare, the physician accepts financial responsibility for any and all malpractice claims brought against him or her, *as well as all defense costs*, in lieu of carrying medical malpractice insurance coverage. If the physician decides to go bare, he or she must consider keeping sufficient assets available or patients could claim they were deceived by representations of financial responsibility.

A recently completed credentialing survey by Princeton for most of our insured facilities demonstrated that facilities are rarely aware of the potential for a physician to have a gap in their insurance coverage. Currently most facilities are only viewing proof of existing coverage, and not determining if the physician has changed insurance carriers and/or types of coverage, including purchasing a tail policy or prior acts coverage when changing claims made policies.

## **Implications of Gaps in Coverage**

What this means to your organization is that the physician who has been a member in good standing of your medical staff for many years now may not have adequate coverage should a claim arise today. In the area of expanding legal theories of corporate and vicarious liability, the actions of the medical staff are often seen as the actions of the organization. Across the country it has become increasingly difficult for defense attorneys to persuade judges and juries to distinguish between the organization and the physicians. Negligent credentialing and claims of false representation regarding financial responsibility for patient recourse may also become prevalent. How these issues relate to adequate continuity of coverage is yet to be seen. However, an organization must be aware of the potential for increased liability. Many organizations throughout the country have amended their medical staff bylaws to require appropriate continuity of coverage.

## **Risk Management Tips**

1. Amend medical staff bylaws to require appropriate continuity coverage. In doing so, place the burden on the applicant – make it clear in policy and in practice that it is the applicant's responsibility to provide the hospital with the information it needs to make a decision.
2. Establish clear and well-defined criteria - If the organization wishes to deny or rescind any privileges from the physician it may be required to provide a hearing or submit a report to the BOM and NPDB. In most instances, it is not reportable to the NPDB when it is based on application of threshold criteria applied to all applicants rather than on individual evaluation of the physician. The criteria should be driven by the Board rather than the medical staff in order to preclude risks under the Federal antitrust laws.
3. If prior acts are written, assure that declarations page indicates any applicable exclusions (e.g. procedures), part time coverage, change of specialty, scope of duties limitation, practice in other states, and limits of liability.
4. The credentialing process should specifically call to attention any unfamiliar or new insurance company and verify that there are no gaps in coverage.
5. Review any changes to the credentialing process and medical staff structure documents (e.g. bylaws) with corporate counsel.
6. Inform and educate the organization's medical staff regarding the personal risks involved in the insurance coverage decision-making. In addition, physicians that have changed affiliations or relationships in group or partnership practices need to be aware of prior acts aspect of the new practice's malpractice insurance.
7. Utilizing the services of a knowledgeable agent/broker will greatly assist in minimizing the potential of coverage gaps in insurance policy protection.