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Beyond Health Care Professional Liability Coverage: A More Complete Solution for Health Care Service Providers

By Robert L. Hernandez

Operating any business in the current economy is a challenging exercise, but perhaps no other sector presents as formidable a set of challenges as the health care industry. The diversity of health care service providers is staggering, ranging from full service hospitals to physician practices, and everything in between. And there are myriad other businesses offering health care services, including pharmacies, imaging centers, clinical labs, drug rehabilitation centers, ambulance services and staffing companies, just to name a few. All are distinct in their own way and face challenges peculiar to the market niches they occupy. Yet, to be successful, each must grapple with a host of issues unrelated to the main objective of providing quality medical services. These challenges include navigating regulatory regimes that vary from state to state, keeping pace with constantly advancing technology, containing ever rising costs and satisfying an increasingly demanding clientele. Add to that list the need to maintain adequate insurance protection against liability and one begins to understand why operating in this space is so challenging.

The First Line of Defense: Health Care Professional Liability Insurance

It is obvious that any organization providing health care services could be liable when someone within the organization makes a mistake that causes a patient to suffer injury. Many service providers purchase health care professional liability (HPL) insurance to cover such claims. The insuring provision of an HPL policy may agree to:

Pay on behalf of covered persons, all sums which covered persons shall become legally obligated to pay as damages because of injury or damage to any person arising out of the rendering or failure to render professional services . . .

where “professional services” would include things such as medical, dental, nursing treatment, dispensing of medications and other similar services. However, HPL coverage, while critical to a complete risk management solution, might not afford all the protection required by modern health care service providers.

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Though the HPL insuring agreement and topical definition of professional services seem clear on their face, the line that separates covered acts from uncovered acts in the real world can be blurry. An example illustrates the point: A man comes into the emergency room of a hospital complaining of chest pains. After being checked and monitored by medical staff, the man is released the same day. While walking to his car in the hospital parking lot, the man collapses. A security guard from the hospital discovers the man lying on the ground, but instead of calling for a stretcher and carting the man right back to the ER, the guard instead follows standing hospital procedure for accidents occurring on hospital grounds and calls 911 for an ambulance. The delay in response causes the man to suffer severe and irreversible brain damage. The issue, from an insurance perspective, is whether the actions of the security guard should be considered “rendering of professional services.” A court in Kansas that considered these facts determined that the guard was not providing medical services, and thus coverage under the hospital’s HPL policy was not triggered.

Consider another example: An ambulance is summoned by the police to respond to a medical emergency. Due to miscommunications between the ambulance driver and the ambulance company dispatcher, the ambulance gets lost and is delayed by several minutes in responding to the call. A man dies as a result. Should driving to the scene of an accident be considered part of the professional services rendered by an ambulance company? (A Massachusetts court, on these facts, said no.) What if the patient was already in the ambulance and then the ambulance got lost? The distinction can be difficult to discern.

Supplementing HPL Coverage with Additional Lines of Protection

Because there are so many scenarios straddling the boundary of covered

professional services and uncovered acts, the prudent organization will often couple an HPL policy with a commercial general liability (CGL) policy to cover occurrences that fall into the gray area. A CGL policy can act as a backstop for claims that slip through the cracks of an HPL policy. However, CGL policies come with their own exclusions that potentially limit coverage to an insured just when it is needed most.

For an organization that conducts specific kinds of operations or provides specialized services, it may be possible to purchase an endorsement that specifically covers the type of activities in which the organization specializes. Backstopping traditional professional liability coverage with complementary products may offer the best possible protection from the wide array of unpredictable scenarios encountered in the increasingly complex health care marketplace.

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