

Rx FOR PRACTICE MANAGEMENT



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How to select malpractice coverage and evaluate carriers

Medical malpractice insurance isn't just a requirement; it's also a major practice expense. Selecting the terms of coverage is a complex, critical task, as is evaluating insurance carriers. In fact, the future of the practice and the reputation of the physicians may rest in the balance.

How much coverage do you need?

Every practice must address its malpractice coverage by asking: How much protection does it want, for what period and events? Malpractice coverage is stated in terms of limits per claim (usually \$1 million is the minimum coverage needed for a low-risk specialty in a low-risk geographic area) and the aggregate limit on payments over the life of the policy (frequently \$3 million, again if risks are low).

There are several types of coverage to choose from.

Most practices will be concerned with claims-made, tail and nose policies. A "claims-made" policy covers incidents that may occur during the policy period and that are reported while the policy is still in force.

The cost will depend on the carrier as well as the coverage needed and the physician's history of adverse events.

When a physician changes policies, it's possible that some claims will be uncovered before the new policy kicks in. The gap can be filled by either "tail" coverage, which takes care of claims that arise after leaving the previous carrier, or "nose" coverage, which extends coverage of the new policy to an earlier date.



Which provisions must you scrutinize?

There are several policy provisions that physicians should review. Most doctors will want to include a "consent to settle" clause. It requires the carrier to obtain the physician's written permission before settling a claim against him or her. Without it, the insurer can settle a claim that the physician believes is defensible.

Another provision is related to the legal costs of defending a claim. Those costs, which can be upwards of \$100,000, may be included "inside" or "outside" the policy limits. The latter is better. Otherwise, a \$100,000 legal defense bill will be subtracted from a \$1 million per occurrence limit, leaving \$900,000 to cover court awards and damages.

It's also important to consider claim acknowledgment. An insurance carrier may acknowledge that a claim has been made in one of two ways:

1. It may require that the insured physician receive a "written demand for damages" from a prospective plaintiff, which means the physician must wait to actually be sued, or
2. The doctor him- or herself is allowed to report an adverse outcome as a potential claim, known as "incident reporting."

The latter is the better choice because the physician can report the incident as soon as he or she becomes aware of it, thus precluding negative PR that comes with a written demand for damages. It also avoids delay in getting the issue out in the open and resolving it. The physician has more control over the process.

Finally, every malpractice insurance policy excludes certain activities from its protection. So, make sure you check the exclusions provision to ensure it fits the kinds of practice activities you have in mind.

Which carrier should you use?

Malpractice insurance companies take many forms. Some are physician-owned; others are traditional commercial entities. Work with a broker or an independent agent to find the insurer that best suits your practice.

The carrier must have sufficient financial resources to satisfy all current and future damages claims against its policyholders. A close look at the carrier's annual report and other financial statements will reveal information about its surplus, net written premiums and loss reserves — key metrics of financial strength.

Also look at ratings issued by industry analysts such as A.M. Best Company and Fitch. A rating of “A-” or better is desirable.

Equally important is the carrier's management philosophy, which is reflected in its underwriting standards, claims management and actuarial policies.

The cost will depend on the carrier as well as the coverage needed and the physician's history of adverse events. To get more bang for your buck, take advantage of valuable preventive services that carriers offer to physician practices to help reduce their legal risk and maintain patient safety. For example, they may provide risk management tools through bulletins, publications and educational programs and even offer premium discounts for practices participating in the programs.

Work with the pros

Physicians need to carefully consider their malpractice insurance. If they don't, they may face serious legal and financial implications from not having proper coverage when they need it. To ensure the well-being of your physicians *and* your practice, make sure you work with an insurance broker, your attorney and your CPA. 🍷

Budget problems?

Get a handle on soaring costs

Practices everywhere are being squeezed by the faltering economy and the need to provide top dollar for top-notch physicians. At the same time, overhead costs seem to be climbing higher and higher. So what's the answer to this dilemma? It's simple: Do all you can to contain your practice's costs.

Compare prices and negotiate

Practices generally spend more than necessary on office and medical supplies. Instead of simply

reordering supplies from your regular vendor, go online and shop prices with various suppliers. It's also wise to investigate buying groups. They can often provide bountiful cost savings. Finally, make sure you negotiate prices for even the most mundane products. After all, small savings on individual items can add up.

To avoid wasteful duplication of orders, assign one person in your office to be responsible for comparing prices, negotiating discounts with vendors



and ordering supplies. In addition, make it a practice to check every invoice for any service charges or late fees and ask that they be removed from your bill. Negotiate everything. And end every vendor conversation by asking, “Is this the best you can do?”

What about prescriptions? If your practice relies on a nearby pharmacy in a pinch, it’s time to stop. You can be sure that the pharmacy has already paid the wholesale price and then added a markup or a service charge. So plan ahead and order from a wholesaler with which you have negotiated fixed pricing.

Obviously, you’ll find the most significant cost savings in high-expense areas. To uncover these higher dollar expenses, review your financial statements for large line items, and then check the accounting system ledger for detail on those expenses. Look for areas of opportunity and negotiate savings or see if you can eliminate the expense.

Look at staffing

Salaries likely make up your highest overhead expense. One of the best ways to reduce those costs is to review the practice’s overtime expenses.

Make sure that all overtime is preapproved by an office manager or physician. Allow only necessary staff to work more than 40 hours per week, and limit overtime by staggering staff hours. Consider rearranging schedules so that some staff arrive an hour later than others and then stay an hour later.

If your practice stays open more than 8½ hours each day, you can cut staff expenses by scheduling some staff to work four 10-hour days rather than incurring overtime. Work with a labor law

attorney to ensure your practice isn’t violating any employment laws.

Also review staff salaries. Ask your office manager to develop a spreadsheet that lists all employees and each one’s job title, start date, date of last raise and current salary (hourly rate). Consult this list before increasing salaries or hiring additional staff.

Another way to save money is to use part-time staff. Doing so will help the practice save on benefits costs.

Re-evaluate health insurance

Speaking of benefits costs: As you know, health insurance constitutes a huge chunk of your practice’s monthly expenses. If you haven’t recently reviewed optional increases in deductibles and copayments, take the time to obtain bids from multiple insurers with multiple coverage options.

Check every invoice for any service charges or late fees and ask that they be removed from your bill. Negotiate everything.

Most practices pass some of the cost of health insurance premiums to their staff. You can do this rather painlessly by setting up a Flexible Spending Account (FSA) plan or, if you offer a high-deductible health plan, a Health Savings Account (HSA) plan for your employees.

Make it count

As the economy continues to limp along, it’s critical that your physician practice remain lean and mean. This requires evaluating every expense, whether it be equipment purchases, staff raises or insurance coverage. It also means taking advantage of certain tax breaks, such as bonus depreciation and Section 179 expensing. Our firm can provide the assistance you need to help keep your expenses down and your revenue high. ☺

Get ready for a RAC attack

Medicare’s Recovery Audit Contractor (RAC) programs have been operational in all 50 states since Jan. 1, 2010. And beginning Jan. 1, 2012, all states must have RAC programs in place to identify improper payments for Medicaid services.

RAC audits initially focused on inpatient settings, where the return on investigative effort is higher, but the audits are now focusing on outpatient settings. All physician practices that submit claims to these federal programs will likely be reviewed at some point by a RAC. So it’s critical that your practice understand how the program works.

The purpose of the program

The RAC program is designed to identify and recover incorrect payments made for noncovered, duplicative and erroneously coded services. The audits are carried out by four private contractors assigned by region. (See “The 4 RACs” below.)

These contractors use software to analyze claims based on each practice’s claims history. On that basis, the contractors may request access to internal documents such as medical records. Audits can reach back to claims paid as early as October 2007.

What happens if there’s been an overpayment

When a RAC audit determines that there’s been an overpayment, your practice will receive a letter demanding recoupment. The letter will explain:

- ⊕ The coverage, coding or payment policy that was violated,
- ⊕ The overpayment situation,
- ⊕ Recommended corrective actions,
- ⊕ Your right to submit a rebuttal statement before recoupment,
- ⊕ Procedures for recouping overpayments,

The 4 RACs

Contractor	Region
<i>Diversified Collection Services</i> (dcsrac.com)	A: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont
<i>CGI</i> (http://racb.cgi.com)	B: Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio and Wisconsin
<i>Connolly, Inc.</i> (connollyhealthcare.com/RAC)	C: Alabama, Arkansas, Colorado, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, Puerto Rico and the U.S. Virgin Islands
<i>HealthDataInsights</i> (http://racinfo.healthdatainsights.com)	D: Alaska, Arizona, California, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming, Guam, American Samoa and Northern Marianas

- ⊕ Your right to request an extended payment schedule, and
- ⊕ Your right to appeal.

Interest begins accruing on the 31st day after the letter. If the practice files an appeal within 30 calendar days of receiving the letter, recoupment will be suspended. An appeal filed beyond 120 days after the letter won't be accepted.

How the appeal process works

There are five potential levels of appeal, should a practice wish to pursue them: 1) redetermination by the RAC, 2) reconsideration by the RAC, 3) administrative law judge, 4) Medicare Appeals Council, and 5) U.S. District Court.

If the practice wins the appeal, neither the RAC nor CMS may appeal further. Note that the first level of non-RAC appeal is to administrative law judges, who may be more sympathetic than the RAC.

How to prepare

Even though CMS is going after intentional fraud and abuse violators, it must investigate even minor violations in order to catch the major ones. Because there's a chance you could be audited and the time frame for appeal is tight, you must be prepared:

1. Visit the RAC's website for your region and learn about specific codes and practice issues on which the RAC is focusing.
2. Review your billing and documentation practices for each area of RAC focus.
3. Hire a certified professional coder to audit a sample of E&M services as well as non-E&M services for each physician.
4. Review your practice compliance plan and make sure each step is operational. If you don't have a plan, begin the process to create one *now*.



5. Prepare a practice protocol for responding to all RAC inquiries, and designate a RAC response officer and staff who'll be involved.
6. Maintain a log to keep track of document requests, recoupment demands, appeal deadlines and final determinations.
7. Consider conducting a mock RAC attack to see how your practice will respond. For example, can your practice assemble the requested documents within the allotted time? Can you prepare and file an appeal by the deadline?

In addition, watch the mail closely so you don't miss any audit requests and subsequent appeal deadlines.

Final words of wisdom

If your practice receives an information or audit request, contact the source to determine the type of audit. Not all independent auditors are RACs or government-mandated. If it's a RAC audit, contact your health care advisor and an attorney. They can help you sort out the situation and determine the best course of action. ⊕



The art of practicing evidence-based medicine

For more than a decade, the movement toward evidence-based medicine (EBM) has focused on the treatment of inpatients in hospital settings. But it's clear that EBM is just as valid for outpatients in physician practices. Several provisions outlined in the Patient Protection and Affordable Care Act (PPACA) give physicians the incentive to practice this brand of medicine. And the time to start is now.

“Cookbook” medicine?

The purpose of EBM is to provide physicians a framework for treating patients on the basis of the latest proven clinical research. Unfortunately, no one physician can follow the voluminous amounts of articles published each year on the topic of EBM.

Physicians often resist EBM as “cookbook” medicine. Even if true, the best cooks use recipes only as a starting point, adjusting ingredients and techniques based on their own knowledge and experience to fit the specific situation. Likewise, EBM is best viewed as a supplement to — not a replacement of — a physician's clinical knowledge and experience.

Scientific evidence

When incorporating scientific evidence into clinical decisions, your practice must, based on a particular patient's problem:

- ⊕ Formulate a specific clinical question that may relate to diagnosis, prognosis, treatment or outcome,
- ⊕ Search current literature for answers to the question, and
- ⊕ Evaluate the evidence found for validity, reliability and relevance.

Once you've satisfied these requirements, you can make a decision on how to treat the patient.

Clinical practice guidelines

Clinical practice guidelines are a manifestation of EBM. These serve several purposes: 1) They back up a physician's clinical decisions, 2) they show the source of the physician's professional expertise, and 3) they're a powerful defense against medical malpractice charges.

If a physician follows a generally accepted guideline, the courts will recognize that he or she is practicing a specific standard of care. And broader adherence to practice guidelines leads to standardization in care.

Where to find help

You can find evidence-based guidelines from organizations such as CMS and the National Guideline Clearinghouse within the U.S. Department of Health and Human Services. The Joint Commission and recognized medical and specialty associations may also have information that can help you find information about the application of EBM and practice guidelines. ⊕

Want to know more?

For more information on the movement toward evidence-based medicine (see main article), check out these websites:

- ⊕ UpToDate (uptodate.com),
- ⊕ The Cochrane Collaboration (cochrane.org),
- ⊕ Medscape (<http://emedicine.medscape.com>), and
- ⊕ ACP Journal Club (<http://acpjournals.org>).

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