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A GAP IN COVERAGE: THE HIDDEN INSURANCE RISK FOR LOCUM TENENS PHYSICIANS



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Locum tenens physicians perform a vital service for health care facilities, filling in for doctors who are on vacation, ill, or unable to practice for other reasons. But there is a possible coverage gap in malpractice insurance that some facilities and physicians may not be aware of that develops after the locum provides their services.

A NEW CONCERN

A liability risk has emerged for these replacement physicians when it comes to malpractice coverage. The source of malpractice insurance coverage is, of course, a very serious issue that should be discussed up front when a new locum comes on board. Facilities have their own coverage, but the sudden discovery of a coverage issue for the locum can be disruptive to physicians and facilities alike.

When a locum serves at a facility, it is often the medical malpractice insurance coverage of the physician for whom that locum is serving that responds when a claim related to the locum's service arises. To put it another way, since the locum is, in effect, continuing the practice of the absent physician, he or she is commonly covered by the staff physician's insurance policy.

But if a staff physician leaves practice due to retirement, termination, disability, or death, their coverage will expire, unless they have purchased an extended reporting period (ERP)—often also called a "tail."

The locum, whose malpractice coverage depended on the staff physician having a policy, might be left without coverage if a claim is made after the staff physician's policy has expired.

For example: Physician A, the staff physician, has retired and her malpractice insurance policy has expired and no tail was purchased. A claim is filed against Physician B for services rendered while the serving as a locum for Physician A., Normally, physician B would be covered by Physician A's policy. But because Physician A longer is covered, this leaves physician B without coverage.

SOLUTIONS TO THE GAP IN COVERAGE

Fortunately, there are solutions to this possible lack of malpractice insurance coverage. As noted before, staff physicians can purchase a tail coverage policy. These can be purchased in a wide range of time periods, but they are expensive, often at 100 percent to 200 percent of the original premium.

Hospitals and other facilities that want to protect their locum providers may want to require staff physicians who use locum services to purchase tail coverage. If this policy is not already in place, it may require negotiation to determine who purchases the tail coverage—the staff physician or the facility.

Another common solution for the locum is to work through a medical staffing service company that regularly provides locum physicians to facilities. These companies typically have a standard policy for malpractice coverage that includes tail coverage. Any physician who works for a health care staffing service that provides locum services should be aware of what coverage is available. In any case, physicians and facilities working with staffing services that offer locum services should, with the help of insurance experts, carefully review their contracts and policies on independent contractors such as locum tenens. Whatever policy is adopted, it should be clearly communicated to all physicians.

One important note: staffing service organizations sometimes go out of business—leaving physicians without coverage. Such occurrences are rare, but not unheard of. This is another reason for a locum to consider other options, such as having their own coverage. The physician can purchase medical malpractice coverage of their own specifically for times working as a locum. While this does increase costs for the physician, it also provides the most control. The extra cost can be a small price to pay for the security provided by such coverage. Physicians can draw from the expertise of insurance consultants to craft the best coverage program for them.

Physicians might also want to consider occurrence malpractice insurance, although this is not available from all carriers. Unlike “claims-made” coverage, occurrence policies cover any claim for an event that took place during the period of coverage, even if the claim itself is filed after the policy lapses. Because of this, an occurrence policy does not require tail coverage. However, this type of insurance is usually more expensive than claims-made coverage.

EDUCATING PHYSICIANS ON THIS POSSIBLE LIABILITY

Health care facilities can play a major role in alerting physicians to this possible gap in coverage. With the help of consultants or brokers, facilities can point physicians to the resources and insurance options that will ensure that no physician goes without medical malpractice coverage at any time. Hospitals should also adopt policies that make it clear to physicians the risk of not buying tail coverage—or simply require it outright.

Facilities should also make sure that staff physicians are aware of all details of locum coverage, including the fact that any claim that occurs for the action of a locum will be filed on the National Practitioner Data Bank under the name of the staff physician, not the locum’s name. Therefore, selection of an appropriate locum to fill in during an absence should not be taken lightly.

It’s in the interest of locum physicians, staff physicians, and the facility itself to avoid problems with medical malpractice coverage. Claims and lawsuits can be devastating to the financial standing and reputation of employers and physicians alike. By understanding possible gaps in coverage and how to avoid them, physicians and health care facilities can minimize risk and the potential damage that could go with a lack of medical malpractice coverage.

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