Shopping for Malpractice Insurance? Learn from the Experts:

If you want to get the right coverage,
there's much more to consider than price.

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Doctors shopping for medical malpractice insurance—when there's a choice available—face the classic good news/bad news scenario. The good news is that rates have started to plateau or even drop, so that physicians in the hardest hit parts of the country are seeing some relief. The bad news is that rates are still so high that too many doctors will continue to do what they have been doing—shop mainly on price.

That's a bad bargain. "Many physicians don't pay enough attention to a carrier's financial security," says Philip Reischman, president and CEO of Gallagher Healthcare Insurance Services, headquartered in Houston. And if that carrier goes belly up, he says, doctors could end up losing much more than they'll save by shopping for a bargain.

To be sure, the cost issue can't be totally ignored, especially in markets like this one. But, say Reischman and others, there are a range of other considerations, including a company's fiscal health, its track record on handling claims, and its willingness to give policyholders a say in resolving claims, that ought to enter into the equation.

You can tackle the process of comparison-shopping on your own or with the help of your specialty society or state medical association. (Many state associations endorse or sponsor their own medical malpractice carrier.) Or you can work with a good broker, someone who can walk you through the shopping process and help you make the right choice.

Whatever route you take, here are the major questions to ask:

What type of med-mal insurer is best for you?

There are basically two types of carriers for doctors in small-and medium-size practices: commercial carriers, which are public, for-profit corporations owned by their stockholders, and mutual or reciprocal carriers, which most of the physician-owned-and-operated companies are. (Doctors in larger groups sometimes turn to "captives," risk-retention groups, and other options in what's known as the alternative insurance market.)

Not surprisingly, each type of insurer has its champions—as well as its detractors. For certain high-risk specialties, the major benefit of commercial carriers is often a more competitive premium than physician-owned companies offer. But the major flaw of commercial carriers, say critics, is that they're often too bottom-line driven, which makes them more eager than physician-owned companies to settle claims in order to save on legal fees.

For more information on doctor-owned-and-operated carriers, check with the Physician Insurers Association of America, the trade association for the industry (http://www.thepiaa.org). There's nothing comparable to PIAA on the commercial side, but the American Insurance Association represents med-mal insurers as well as others (http://www.aiadc.org).

How financially stable is the company?

Just as crucial as the type of company you choose is its fiscal health. "There's no set of attributes that a company can possess, no matter how wonderful, that can make up for insolvency," says oncologist Richard E. Anderson, chairman and CEO of The Doctors Company, a leading physician-owned medical malpractice insurer.

This dictum is well illustrated by the insolvency of Ohio-based PIE Mutual Insurance Co. in 1997. Nearly 15,000 physicians not only lost millions of dollars in uncovered premiums, they also had to quickly purchase replacement coverage from other carriers, often at higher rates. Doctors who had unpaid claims against them were forced to rely on their state's guaranty fund.

To avoid a similar fate, be sure to do your financial homework. The best place to start is with one or more of the three best known insurance rating agencies—AM Best Company, Standard & Poor's, or Weiss Ratings. To industry experts, each of these has its strengths and its weaknesses.

"I tend to favor Standard & Poor's," says insurance broker Philip Reischman. "It gives the most sophisticated, least biased analysis, although some carriers don't opt to be rated by S&P." Other experts prefer AM Best, despite what some see as the absence of fine shades of gray in its alphabetical rating system. Still other experts prefer Weiss Ratings' greater consumer focus. (Weiss says it's the only agency that isn't paid by the companies it rates.)

Whichever rating agency you choose, pay attention to cautionary flags. If you're working with a broker, ask him what he hears on the street. Don't dismiss rumors that a company may be financially shaky. Also, verify with your state insurance commission that your company is an "admitted carrier," which means it's passed financial muster and has been authorized to sell insurance in your state. "Many hospital bylaws now require that doctors granted admitting privileges be insured by such carriers," says Larry S. Fields, president of the American Academy of Family Physicians.

What type of policy works best for you?

Several years ago, this would have been a harder question to answer than it is now. Today, the overwhelming percentage of carriers, whether commercial or doctor-owned, offer only claims-

made policies. If you purchase one, you'll be covered for any adverse event that someone reports to your carrier *while your policy is in effect.* This last qualification is crucial: You won't be covered for any claims reported after your policy is terminated, even though they derived from events that took place while it was in force.

To cover such claims, you'll need to purchase, at considerable additional expense, extended reporting or "tail" coverage. Some carriers offer retiring doctors free tail coverage, providing they meet certain conditions. (Since definitions of retirement differ—for instance, is a retired doctor who does volunteer work really retired?—check with your prospective carrier to see when and under what conditions it will make free tail coverage available to you.)

The rapidly disappearing alternative to the claims-made policy is occurrence coverage. With this type of policy, you'll be insured for any adverse incident that occurs while your policy is in effect, regardless of when it's reported or becomes a claim. (It's precisely because of the difficulty of projecting long-term claim costs under such policies that most carriers have deep-sixed them.)

Since they incorporate tail coverage, occurrence policies are typically more expensive than claims-made policies by themselves. But when claims-made policyholders factor in the extra cost of purchasing tail coverage, those differences rapidly disappear, and, in fact, may even tilt the other way. For employed doctors, there are additional benefits to an occurrence policy, since, if they change jobs, they aren't dependent on their former employer to keep a tail policy in effect for them. (This is especially important in claims involving failure to diagnose, which may not be reported until years after the alleged adverse incident takes place.)

"If a doctor has the opportunity to buy an occurrence policy, he ought to give it a good strong look," says Paul R. Frisch, general legal counsel at the Oregon Medical Association.

Does the policy include doctor-friendly provisions?

Doctors' right to have a major say in the claims-resolution process has become especially crucial since 1990, when it became mandatory for insurers and other entities to report all malpractice payments to the National Practitioner Data Bank. And since these reports can affect physician licensure, medical staff privileges, health plan contracts, and future malpractice coverage, you have a major stake in whether your insurer settles a claim, especially one that you believe lacks merit. For many doctors, the absence of a guaranteed consent-to-settle clause in their med-mal contract—which requires that your carrier obtain your permission before settling a claim—is a major deal breaker.

Be alert to other stumbling blocks, too: For instance, if a claim is filed against you, will it be reviewed by a consultant in your specialty? If not, that's cause for concern.

Also, is the cost of fielding a defense subtracted from your indemnity limit, giving you, in effect, less coverage? If so, think twice before signing on the dotted line. "I consider appropriate coverage a policy that *doesn't* take the cost of defense out of the indemnity pot," says OMA's

Paul Frisch. He's also in favor of policies that cover doctors' legal fees for appearances before their state licensing board.

Be alert, too, to what your policy explicitly excludes—like coverage for punitive damages—since courts are less sympathetic to doctors contesting a carrier's limitations if those limitations have been spelled out fully in advance. "For this reason, have your attorney read and review your contract carefully before signing, or talk to your state medical or specialty society," says Frisch.

These are the major questions you should consider when shopping for a med-mal insurer. (The Doctors Company offers some others on its website, http://www.thedoctors.com/whychoose/carrier/carrierquestions.asp|~www.thedoctors.com/whychoose/carrier/carrierquestions.asp, but it doesn't provide any answers). By getting the answers, you'll almost certainly be ahead of the game, compared to many of your colleagues. As insurance company chairman and CEO Richard Anderson says, "Most doctors resent the medico-legal system so much that the less time they spend worrying about malpractice insurance the better they feel."

Unless and until there's a problem, that is.

At that point, the decisions you've made—about what type of company to sign with, what type of policy to buy, what kinds of provisions and exclusions you can live with can spell the difference between a difficult but manageable experience and a living nightmare.

Should you use a broker?

Med-mal insurance brokers desperately want your business, but even the most successful acknowledge that there are times when their services aren't really necessary and may, in fact, do more harm than good.

If, for example, you live in a state where the bulk of the med-mal market is dominated by a "direct writer"—a company like Texas Medical Liability Trust in Austin, or COPIC in Denver, or Medical Liability Mutual Insurance in New York that sells directly to customers—you're not likely to need a broker, unless you want other choices.

A good broker will also discourage you from using him if it isn't in your best interests to do so, says John Miller, a principal with Sterling Risk Advisors, Marietta, GA. Consider the doctor shopper who thinks he can do better, despite the fact that he has multiple claims against him and his current carrier is renewing him at a reasonable rate. If he shops around and an insurer rejects his application, he'll have to reveal that rejection the next time he shops for a carrier.

Or what about the doctor who wants a change, despite nearing retirement age and free tail coverage from his current carrier. "A responsible broker would say, 'Doc, you really need to stay where you are,' " says Miller.

Still, there are plenty of other times when a broker's services are worth considering.

How do good brokers do their job? They begin by identifying your goals and then gathering as much information as they can about your practice and specialty, your current and prior carriers, and your claims history.

How this history is presented is critical. "Underwriters understand that not all malpractice claims are the result of a physician's malpractice, and a skilled broker is able to paint the whole picture," says Miller.

Good brokers also insist on full disclosure, he says, especially if there's something problematic in a doctor's background—drug abuse, for instance—that an underwriter is likely to unearth himself.

Your broker will package and submit your information to a group of likely prospects, and then help you evaluate their responses. "We present physicians with a comparative analysis for the top two to four contenders," says Philip Reischman, president and CEO of Gallagher Healthcare Insurance Services in Houston.

Brokers earn their money in one of two ways: from carrier commissions or fees from their doctor-clients. For commission-based deals—the arrangement of choice for smaller practices—Reischman lists the commission he stands to earn from each carrier.

Not all brokers follow this voluntary policy—or think they need to. "Most carrier commissions are within a point or two of each other, so disclosure is unnecessary," says Miller.