

Purchasing the Right Malpractice Insurance

In today's litigious environment, purchasing the right medical malpractice insurance policy and the appropriate amount of coverage is important for nearly all physicians in active practice. (Federally employed physicians are the one exception—the Federal government insures itself and its physicians.) Some states require physicians to have some type of medical liability

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coverage to cover claims arising from treatment of patients. Even in states that do not require it, physicians usually have to have insurance coverage to qualify for hospital privileges or to work with health insurance plans.

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Price Factors

A number of factors influence the price of yearly premiums, including whether the state in which you practice has enacted effective tort reform measures. However, the one factor that appears to be most responsible for premium increases has been identified. The Government Accountability Office, U.S. Department of Health and Human Services, and the National Association of Insurance Commissioners have all concluded that increases in losses and other claims costs are the primary reason why premiums have risen, reports Stanford University Professor Daniel P. Kessler, PhD. Dr. Kessler serves as a research associ-

ate for the National Bureau of Economic Research.

That's the bad news. The good news is that Dr. Kessler's research seems to show that tort reform works. Released earlier this year by the Physicians Insurers Association of America (PIAA), Dr. Kessler's report concluded that tort reforms are the best proven instrument for reducing medical liability insurance premium growth. The study also indicates that tort reforms help decrease claims costs and, in turn, premiums for physicians.

That has apparently been the case in Texas, where the Medical Protective Company (a member of the GE Insurance Solutions group of companies) announced in 2005 that it planned to reduce rates and expand insurance offerings in Texas. The carrier said that this action reflected the company's internal data updates, which suggested that the state's 2003 tort reform measures were beginning to take hold.

Types of Insurers

There are a number of possible sources for obtaining professional liability coverage. The major ones are *physician-owned insurance carriers*, *commercial insurance carriers*, and *risk-retention groups*. Physician-owned insurance carriers cover the majority of office-based and practicing nongovernmental physicians. Commercial insurance carriers, owned by stockholders, provide coverage for many of the remaining doctors in the country. A risk-retention group (RRG) is a liability insurance com-

Preparing for Renewal Time

If policy renewal time is coming up, insurance experts say to start the process early. Six months in advance is not too soon to assemble needed information. If you are working with an agent to purchase your coverage, respond quickly to requests for information. Take the time to document all communication with your agent, and keep notes on such key items as policy limits, deductibles, and requested effective date. Update and document all patient-safety and loss-control measures, including employee training. Be prepared to show why your practice is and will remain a good risk. "Physicians can accomplish this by demonstrating a scarcity or absence of prior claims," says Mr. Quinley.

pany owned by its members. RRGs are part of the alternative insurance market. (For more on RRGs and other alternative products, see below.)

Most physician-owned companies in the U.S. are organized as *mutual insurance* or *reciprocal insurance companies*. A mutual insurance company has no stockholders. It holds the company's assets, and the company is owned by its policyholders. A reciprocal insurance company is an unincorporated association. Similar to a mutual company, its assets are owned by its policyholders, who are members of the reciprocal insurance company. Both commercial and physician-owned carriers are governed by U.S. laws and insurance regulations. With these companies, policyholders can easily change carriers to take advantage of prevailing market conditions.

Two types of alternative insurance products are worth considering as part of a physician's overall strategy for surviving the medical malpractice crisis: *captive insurance companies (CICs)* or *risk-retention groups (RRGs)*.

Alternative Insurance Market

There is also the alternative insurance market, which—although less common—still offers viable choices for some physicians. The actuarial firm Milliman Inc. estimates the alternative market premiums at only \$9 billion, or about 40 percent of a \$21 billion medical malpractice market. According to David B. Mandell, JD, MBA, and Christopher Jarvis, MBA, partners in the financial planning firm Jarvis & Mandell, two types of alternative insurance products are worth considering as part of a physician's overall strategy for surviving the medical malpractice crisis: *captive insurance companies (CICs)* or *risk-retention groups (RRGs)*. Of these two, RRGs are more common.

A CIC is an insurance company created by physicians to insure their own medical practices. A third-party company may write the initial malpractice policies, which are then reinsured to the CIC. A physician or practice may choose a CIC to replace or to supplement other medical malpractice insurance.

There may be substantial advantages to CICs, including expanded coverage and tax benefits, say Mr. Jarvis and Mr. Mandell, authors of *The Doctor's Wealth Protection Guide*. But the

upfront costs are “not insignificant,” including setup, necessary filings, and ongoing management. And there is a fair amount of risk involved. “Unlike most insurance policies you have purchased in the past,” they say, “the policies issued by your CIC are backed by your assets. There is no one out there to pay for your losses. You must be prepared to pay for these claims out of your CIC reserves.”

A more popular alternative product is an RRG. RRGs do not buy commercial insurance policies, but retain the risk within the group; the physician members insure each other against liability claims and lawsuits. Since RRGs are insurers, they may purchase reinsurance. This is a form of insurance that companies buy to cede part of their risk or to spread losses over several years.

According to Mr. Jarvis and Mr. Mandell, RRGs can often offer coverage for less than a commercial insurer. In addition, because the company is owned by the physicians themselves, it may give members more control over their professional liability programs. However, they point out, there are pitfalls involved. First, they say, finding an RRG in your area may be difficult. In

What If You Lose Coverage?

If for some reason you are dropped by your malpractice carrier, or if your carrier leaves the market, ask your medical society to suggest other carriers. State insurance departments can also provide information about available coverage. (For the names of some specific carriers, see sidebar.) Some states have “take-all-comers” medical practice insurance laws. As a result, medical malpractice insurers that are licensed and writing medical malpractice insurance in these states will make coverage available to all healthcare providers.

Recent insurance reforms in some states have helped to increase the availability of malpractice insurance, according to a 2002 report from the National Academy of State Health Policy. These reforms include patient compensation funds (PCFs), joint underwriting associations (JUAs), limitations on the ability of companies to cancel policies, and requirements for insurers to report the disposition of claims to insurance regulators.

The report explains that many states have set up JUAs to make medical malpractice insurance available to providers who are unable

addition, RRGs are very selective about taking on the risk of new members. If you are accepted into the program, you take a risk yourself, these consultants point out. “You run the risk that someone else’s loss may cost you. If all members of the group have fortunate years, everyone is happy. If a large number have losses, you may find yourself paying more to an RRG than you would have paid if you had utilized traditional insurance.”

Here’s how RRGs work: In general, when first joining an RRG, a physician pays a capital contribution in addition to the annual insurance premium. An RRG can raise capital only from policyholders and has no means to borrow or raise capital on its own. These groups are governed by the regulations of the state in which they are located. To qualify as an RRG, the insurer’s equity must be owned by its policyholders. As a result, RRGs can insure only physicians who are investors.

If an RRG is adequately capitalized and operated, it can be a viable insurance alternative. To ensure that an RRG is adequately capitalized and financially sound, physicians should review the group’s annual financial statement before buying coverage. It is

to obtain insurance in the regular market. A JUA is a type of shared market mechanism wherein the costs of providing the insurance is borne by all companies writing insurance in a state. If you need this type of coverage, check with your state insurance department to find out if a JUA is available. The cost of coverage under a JUA is pegged to the cost of private insurance and is almost always more expensive than private insurance, according to the National Academy report. In addition, if the JUA’s losses exceed the premiums that it collects, other insurers in the state are required by law to contribute toward covering the losses.

PCFs are set up by states to provide coverage in excess of the coverage limits of a malpractice insurance policy. Whenever a malpractice judgment exceeds the physician’s primary policy limit, the PCF pays the amount above the limit or the amount between the limit and another statutorily prescribed amount. While these and other insurance reforms have been effective in increasing availability of insurance, experts say that they do not necessarily make the cost of malpractice insurance any more affordable.

also important to find out when or under what conditions you can get back your capital investment, and under what conditions you can (or cannot) withdraw from the program.

When looking into the soundness and reputation of an RRG, it is a good idea to check with your medical society for its recommendations, says Lawrence E. Smarr, president of Physicians Insurers Association of America (PIAA). PIAA is the trade association of more than 57 domestic

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professional insurance companies owned and operated by physicians and dentists. PIAA members insure over 60 percent of private practicing physicians in the U.S. (www.piaa.us)

Another factor to keep in mind is that insurers of RRGs do

not have access to the various state guarantee funds designed to help physicians if a standard carrier becomes insolvent. If an RRG becomes insolvent, physicians in the group are left without coverage and have to pay for the cost of their own defense if they face a claim. State guarantee funds are funded by traditional insurance carriers through annual taxes. Even so, these funds have a limited indemnity amount, which is approximately \$300,000 for each incident. In some cases, RRGs may have to put in place “voluntary assessments” to offset any inadequacies in premiums. In other situations, if an RRG declares bankruptcy, a federal bankruptcy judge will determine what assessment amount is needed.

How Much Coverage?

When deciding how much medical liability insurance is enough for your practice, insurance experts say that it is important to consider a number of factors, including the specialty, the procedures performed, and the location of the practice. In addition, the exact amount of coverage will depend on the laws of the state in which you practice, the extent of your assets, and the affordability of the coverage that you wish to purchase. Coverage requirements may be dictated by hospital bylaws or managed-care contracts.

But there is no magic formula to determine how much medical malpractice coverage is enough, maintains Kevin M. Quinley, senior vice president of risk services for MEDMARC Insurance Group, Chantilly, Va. Physicians will have to perform a balancing act between the protection they need and the affordability of coverage. “While it might be nice to have \$10 million in limits, financially it may be out of the question,” he says. One way to make sure that you have sufficient insurance is to discuss your individual situation with your broker or insurance company to determine the appropriate level for the amount of risk you have, says Mr. Smarr.

The most common type of physician liability policies provides \$1 million coverage per incident and \$3 million coverage per year. For some physicians in relatively low-risk practice categories such as pathology, radiology, and psychiatry, \$500,000 or \$1 million may be sufficient, but for a cardiovascular surgeon implanting heart valves or an obstetrician specializing in high-risk pregnancies, \$5 million or more may be appropriate, Mr. Quinley explains.

Legal experts caution that you must understand what your policy actually says. If you are hit with a malpractice suit, for example, you need to know your responsibilities to the carrier, such as saying or doing nothing that might prejudice your defense or exacerbate the alleged damages. Insurers want to be notified as soon as possible with details about how, when, and where the

Settle or Fight? Your Policy May Affect Your Decision

Before signing on the dotted line, check your policy’s specific provisions concerning defense or settlement in the case of a lawsuit. The details of your policy can affect your decision. (For more about deciding to fight or settle a case, see chapter 4.)

Look out for these clauses:

- **Consent to settle clauses:** These clauses generally give physicians a say in whether or not to settle.
- **Hammer clause:** Under such a clause, the insurance company is not responsible for any judgment amount that is greater than the settlement offer. This means that all legal expenses above the settlement offer are the physician’s responsibility.

alleged wrongful event took place. They also want the names and addresses of any witnesses and injured persons, and the nature and location of any injury or damage.

In addition, you should determine how legal costs are treated under your policy. They can be included within the limits of liability or may be considered in addition to those limits. Keep in mind that a complicated malpractice case, including trial, can run up defense costs to over \$250,000. Finally, it is important to know whether you will be reimbursed for lost wages if you have to attend court and exactly what services you will receive for your defense.

Types of Coverage

Physicians need to know the specific details of the type of insurance they are purchasing. Most policies written today are *claims-made policies*. Claims-made policies cover claims made against the policyholder during the period in which the policy is in effect. An *occurrence policy* covers the insured for any incident that occurs while the policy is in force, regardless of when the incident is reported or when it becomes a claim.

Occurrence insurance for medical liability coverage is not offered very frequently now because of the difficulty of projecting long-term claims costs under this type of policy. While occurrence insurance may be available in some states, PIAA's Smarr says that over 80 percent of the market is made up of claims-made policies at this time.

If you are considering changing insurers or jobs, it is important to take steps to prevent gaps in coverage by purchasing *tail coverage* from your old carrier or *prior-acts coverage* from your new one. Prior-acts coverage, also called *nose coverage* or *retroactive coverage*, provides malpractice protection for acts committed when covered by a claims-made policy by another insurance carrier. Prior-acts or retroactive coverage is accomplished by setting the retroactive date back to the original effective date of your first policy. This coverage allows physicians who meet certain underwriting criteria to purchase new coverage without obtaining a reporting endorsement (tail) from their previous insurer. Prior-acts coverage protects physicians for treatment rendered under a previous policy with another

insurer, but not reported as a claim or suit until after that policy has terminated. Generally there is not a separate premium for this coverage.

For physicians leaving one medical group to join another, it is important to determine whether either group will help with the cost of tail or prior-acts coverage. In addition, many insurers provide tail coverage at no cost to policyholders upon full retirement at age 55 or older (if the retiree has been insured for five years with the company), or to policyholders who suffer death or permanent and total disability.

A prospective insurer uses past claim frequency and severity as one component of its analysis of the risk presented by a physician. The theory is that past losses represent a barometer of the frequency and size of prior claims.

Filling Out the Application

Completing the application for medical liability coverage can be time consuming. It is important to answer all questions thoroughly and accurately, in order not to jeopardize coverage in the event of a claim. Failure to list prior claims or disciplinary action may enable the insurer to deny coverage if a malpractice suit is filed. A typical application can run ten or more pages. Insurance underwriters want a complete package when physicians apply for malpractice insurance coverage.

While an office manager may be able to help with some of the more generic parts of the application, the physician should spend time on the application and review it thoroughly before returning it to the carrier. Usually the insurers also ask for a copy of the physician's curriculum vitae, which the underwriter will examine to ensure that its information regarding educational background, board certification, and medical licenses is consistent with the application.

Most insurance companies will ask for the physician's claims history. But there is no set requirement on the number of years of history that must be provided. Some insurers may want five years; others may want only three, says Mr. Quinley. A prospective insurer uses past claim frequency and severity as one component of its analysis of the risk presented by a physician. The

theory is that past losses represent a barometer of the frequency and size of prior claims, he explains.

When applying for coverage, experts say, make certain that your insurance broker or the companies involved are completely aware of the full nature of your practice. Your goal is to

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obtain coverage for the specific type of services and procedures that you provide to patients. “If you are serving in the emergency room of a hospital, be sure to explain this to the insurer,” says Mr. Smarr.

When you buy claims-made policies, the first-year premium is approximately 25 percent of the cost of an occurrence policy. That is because premiums for a claims-made policy are based only on claims settled during the previous year or those projected to be settled in the coming year. In addition, there is often a significant lapse between the time treatment is administered and the time a claim resulting from that treatment is filed. Over a period of four or five years, the premium on these policies may climb up to the insured rate, explains Mr. Smarr.

Claims-made policies make it possible to increase liability limits when necessary. If you have a claims-made policy, you will always need “tail” protection to provide coverage for any claims that may arise after the policy is no longer in effect.

Premiums for tail coverage can be expensive and typically cost 150 to 200 percent of the price of a mature claims-made policy. Generally the cost of this coverage will depend on location of the practice, limits of liability, and specialty. The farther back in time the policy must offer coverage, the more expensive tail coverage becomes, since the liability assumed by the carrier becomes greater.

You should factor this additional cost into the financial planning and projected expenses of medical practice. In some cases, insurers may allow the expense of tail coverage to be spread over a few years to avoid the higher cost all at once.

Evaluating Carriers

While it may be tempting to go with a carrier that quotes the lowest premium, experts point out that the price of coverage is only one factor among many. It may be time consuming, but it is important to thoroughly check out the reputation and financial standing of any insurance carrier in order to avoid companies that may lack the resources or determination to stay in the challenging malpractice insurance market. "Using a qualified broker or agent can provide good advice on the soundness of compa-

Companies Offering Malpractice Coverage in the U.S.

Below is a listing of some of the insurance companies selling medical malpractice coverage in the U.S. For a comprehensive listing of physician-owned companies, go to the Physicians Insurers Association of America web site for their directory of member companies at www.piaa.us/directory.

(Note: Typically these companies offer insurance in the states in which they are domiciled and states contiguous to their location. There are exceptions, however. For example, The Doctors Company is headquartered in California, but writes coverage on a national basis. In addition, while a carrier may be licensed in a state, it may not actually be actively writing policies in that state. When checking with a carrier, be sure to determine its current coverage areas.)

American Physicians Assurance Corporation, 1301 North Hagadorn Rd., P.O. Box 1471, East Lansing, MI 48826-1471; phone: 800-748-0465; www.apassurance.com

COPIC Insurance Company, 7351 E. Lowry Blvd., Denver, CO 80230; phone: 720-858-6000; fax: 720-858-6001; www.copic.com

DiederichHealthcare, 506 W. Main St., Carbondale, IL 62901; phone: 800-457-7790; www.diederichhealthcare.com

The Doctors Company, 185 Greenwood Rd., P.O. Box 2900, Napa, CA. 94558-6270; phone: 800-421-2368; fax: 707-226-0111; www.thedoctors.com

ISMIE Mutual Insurance Company, 20 N. Michigan Ave., Suite 700, Chicago, IL 60602-4890; phone 312-782-2749; fax: 312-782-2023; www.ismie.com

Kansas Medical Mutual Insurance Company, 623 SW 10th Ave., Suite 200, Topeka, KS 66612-1615; phone: 785-232-2224; fax: 785-

nies,” Mr. Smarr advises.

In the past some carriers found it necessary to pull out of the market either voluntarily or because they were declared insolvent, leaving thousands of doctors scrambling to find replacement coverage. For example, The Saint Paul Insurance Company, one of the largest providers of malpractice insurance in the country, left the market completely in 2002. This resulted in a void of almost \$1 billion in premiums that had to be absorbed by other carriers. At about the same time, the Reciprocal Group, a Vir-

232-4704; www.kammco-msc.com

MAG Mutual Insurance Company, Building 8, Suite 600, 3525 Piedmont Rd., Atlanta, GA 30305-1533; phone: 404-842-5600; fax: 404-842-5614; www.magmutual.com

Medical Insurance Exchange of California (MIEC), 6520 Claremont Ave., Oakland, CA 94618; phone: 800-227-4527; fax: 510-654-4634; www.miec.com

Medical Liability Mutual Insurance Company, 2 Park Ave., Suite 2500, New York, NY, 10016-9394; phone: 212-576-9800; fax: 212-725-0916; www.mlmic.com

Medical Mutual Insurance Company of Maine, One City Center, 9th Floor, Portland, ME 04101-4009; phone 207-775-2791; 207-775-6576; www.medicalmutual.com

Medical Mutual Liability Insurance Society of Maryland, 225 International Circle, Box 8016, Hunt Valley, MD 21030-1352; phone: 410-785-0050; fax: 410-785-2631; www.weinsuredocs.com

NORCAL Mutual Insurance Company, 560 Davis St., San Francisco, CA 94111-1902; phone: 415-397-9700; fax: 415-835-0800; www.norcalmutual.com

ProMutual Group, 101 Arch St., 4th Floor, Boston, MA 02205-5178; phone 617-330-1755; fax: 671-330-1748; www.promutualgroup.com

State Volunteer Mutual Insurance Company, 101 Westpark Dr., Suite 300, Brentwood, TN 37027; phone: 615-377-1999; fax: 615-221-2738; www.svmic.com

Texas Medical Liability Trust, Barton Oaks Plaza V, Suite 500, 901 Mopac Expressway S., Austin, TX 78746-5942; phone: 512-425-5800; fax: 512-328-5637; www.tmlt.org

ginia-based insurer, was placed in receivership.

While today's market appears more stable, Mr. Smarr says that there is no way to predict if a carrier will stop writing this line of business.

When selecting an insurer, find out how much of the company's business is made up of medical professional liability coverage. The larger their malpractice insurance business, the more likely

On average, it takes 22 months for a claim to be reported and an additional 33 months to make payment. Carriers should have sufficient financial resources to meet all current and future claims against policyholders.

they are to provide the service you need. The carrier should have a long record of continuous service to area doctors, and should offer competitive and stable rates. In addition, physician-owned companies are in business only to write medical malpractice insurance and are therefore less likely to leave the market.

Make sure that any carrier you deal with is adequately capitalized so that it is more likely remain in the market over the long term. On average, it takes 22 months for a claim to be reported and an additional 33 months to make payment. Carriers should have sufficient financial resources to meet all current and future claims against policyholders.

Another factor to consider is the type of rating an insurer receives from A.M. Best Company. Insurers are evaluated annually by this organization; and ratings are upgraded, downgraded or confirmed. The ratings are based on review of a company's balance sheet, operating performance, and business profile. Top ratings are A++ or A+ (superior), A or A- (excellent) and B++ or B+ (very good). (To find a carrier's most recent rating, go to www.ambest.com.) Experts say that insurers receiving ratings lower than B+ may lack the financial stability to handle a large jury verdict.

Dun & Bradstreet (www.smallbusiness.dnb.com) also sells comprehensive reports on companies' financial standing.

When checking on an insurance carrier's financial soundness, experts recommend making sure that the company has a good ratio of net premiums to surplus for protection in case of unexpected losses. A company's surplus—the amount by which its

assets exceed its liabilities—also represents the working capital of the organization. It is determined by adding the balance sheet items: capital paid in, surplus, surplus paid, and earned surplus.

Claims against a policyholder—as well as the insurer's estimate of future losses on those claims—are recorded as expenses. The liability associated with the portion of these incurred losses that has not yet been paid by the insurer is known as the *insurer's loss reserve*. To maintain financial soundness, insurers must maintain assets in excess of total liabilities.

Another factor to investigate is an insurer's claims management philosophy and its performance level in handling and pro-

Questions to Ask When Shopping for Malpractice Insurance

Premium price is only one factor when choosing a medical malpractice insurance carrier. The Doctors Company, Mr. Smarr and other experts suggest that physicians ask the questions to assess a particular carrier's financial standing and the suitability of its policy to their circumstances. These questions might include:

- What type of carrier is it? Is it a stock company, a mutual or reciprocal carrier, or an alternative-market carrier?
- Is the carrier endorsed or sponsored by any medical associations, and does it offer discounts on membership?
- How long has the carrier been in the business of writing medical malpractice insurance?
- Does the carrier offer policy deductibles? Or does it offer discounts for physicians with favorable claims histories?
- What payment-plan options does the carrier offer?
- What happens when a physician reports a claim? Are services prompt? Will claims be reviewed by a consultant in the physician's own specialty?
- How does the company handle frivolous claims? The best claims professionals are committed to providing a strong defense against claims that have little merit.
- What recourse is available if the physician disagrees with the carrier's claims decision?
- Does the company cover punitive awards?
- What is the extended-reporting (tail) coverage if the physician moves to a practice that is covered by another carrier?

cessing claims. Colleagues who may have had a claim with the carrier may be able to provide insight into how well the carrier performs. Local medical societies may also be able to provide details on claims performance.

Carriers should provide prompt service that includes answering questions and providing necessary advice from an experienced claims staff member. It is best to deal with insurance companies that will provide a written explanation of how to proceed in case of a claim.

As a special service to policyholders, some insurers offer litigation stress-reduction programs, which are often used in conjunction with a sponsoring state medical society, explains Mr. Smarr. “Being sued is a very disruptive and stressful situation for doctors, and stress assistance programs can be very helpful to physicians,” he says. Attorney Saxton agrees and points out that because a malpractice case touches everyone—physicians, medical staff, nurses, patients, and family members—this type of support is critical. (For more on stress-reduction programs, see box in Chapter 3.)

Other added services offered by some insurance companies include regular newsletters and seminars and courses in risk management. (Some even offer discounts to physicians who take risk management courses.)

Another area to investigate is the background and experience of the claims staff. They should have the legal and medical backgrounds necessary to be able to defend claims. Policyholders should be strongly defended against claims without merit. “Overall, doctor-owned companies are more likely to vigorously defend these types of claims,” says PIAA’s Mr. Smarr.

Policy Details and Restrictions

All policies have exclusions to coverage. Before signing on the dotted line, try to obtain a sample policy to read; and check out the exclusions as well as requirements under the policy. If possible, the policy should cover all procedures or treatments you perform. Insurance experts point out that sometimes an attractive rate might accompany a policy that has unacceptable limitations or restrictions. “In some situations, there may be certain procedures performed by specialists that an insurance car-

rier simply doesn't want to cover," says Mr. Smarr. In addition, if doctors have already had claims in certain areas of their practice, the insurer may decide to provide coverage to the medical practice for everything except the area in which the practice has experienced claims. Checking your policy carefully will help you determine what sort of restrictions you face. If the restrictions are unacceptable, you may have to look for coverage with another insurer.

It is also important to study carefully the consent-to-settle clauses. These define the terms under which a settlement may be agreed upon by the insurer and the physician.

It is also important to study carefully the *consent-to-settle clauses*. These define the terms under which a settlement may be agreed upon by the insurer and the physician. Physicians should avoid language that allows the insurance carrier to settle a claim with or without their consent. It is better to have language that grants the physician some authority to consent to any settlement of a claim. This gives the physician more control over claims settlements.

Another clause to look out for is a *hammer clause*, which could come into play if a physician refuses a plaintiff's offer of settlement. Under this clause if the insurance company goes ahead with the case at trial, the insurance company is not responsible for any judgment amount that is greater than the settlement offer. This means that all legal expenses above the settlement offer are the physician's responsibility.

Under law, malpractice settlements and judgments are recorded with the National Practitioners Data Bank. (For more on NPDB, see chapter 4.) Each entity that makes a payment on behalf of a physician, dentist, or other health practitioner in settlement of, or in satisfaction in whole or in part of a claim or judgment against the practitioner, must report the payment to this bank. Claims history can affect career plans and insurance coverage since licensing boards, hospitals, and insurers require physicians to provide claims information, including settlements.

What to Do About Sky-High Premiums

As is the case with most kinds of insurance, the malpractice

variety is regulated by the states. As such, state insurance commissioners regulate rates to make sure that they are not excessive or unfairly discriminatory, explains the Robert Wood Johnson Foundation's report *Understanding Medical Malpractice Insurance: A Primer*. The report explains that "variations in this state-specific regulation are one reason that premiums may go up (or down) in some states and not in others."

Premiums are based on other factors as well, such as medical specialty and geographic region. Anticipated losses on claims and related expenses by insurers, expected investment income, expected administrative expenses, and the need for carriers to build a surplus also influence premiums. In addition, of course, for-profit insurers must earn a reasonable profit for their shareholders.

Past claims history can affect premiums. Recently, however, some standard carriers are starting to loosen their underwriting and liberalizing their consideration of past claim activity, according to Diederich Healthcare, a division of the Diederich Group, which has over 200 contracted insurance affiliates.

In fact, some observers believe that a softening in the medical professional liability insurance market is emerging. "We are working with insurance carriers to be more accommodating to physicians' needs. Rates are beginning to stabilize with companies taking much less in the way of rate hikes, and some companies have made the decision to keep their rates flat," writes Jeffrey M. Diederich, president and CEO of the Diederich Group, in a recent issue of its newsletter *The Standard*.

While this is good news, a hard insurance market still exists in many parts of the country. "Premiums for many physician specialties have doubled, and in some cases tripled. Some physicians simply cannot find coverage unless they seek help in a state-funded program," writes James W. Saxton, Esq., in his book

The Satisfied Patient.

An annual nationwide rate survey published by the Medical Liability

Do your patients have questions about Medicare Part D? We've got the answers in Your Guide to Medicare Part D from *Patient's Digest*. Go to www.doctorsdigest.net to download an executive summary that gives patients quick tips and instructions on how to get the free publication.

Monitor (www.mlmonitor.com), an independent publication that reports exclusively on medical liability insurance, found that physicians are continuing to seek ways to save money on medical malpractice premiums. They are assuming more risk in the form of increasing deductibles, lowering policy limits, or eliminating certain types of insurance. Typical deductibles range from \$5,000 to \$100,000, in any combination of indemnity and/or expense, depending on the size of the group, the survey says.

While it is not easy, physicians may try to negotiate rates with medical malpractice carriers. If possible, check with several insurers to obtain quotes on premiums. To compare rates fairly, it helps to understand the provisions of coverage.

Physicians are continuing to seek ways to save money on medical malpractice premiums. They are assuming more risk in the form of increasing deductibles, lowering policy limits, or eliminating certain types of insurance.

Some carriers offer physicians *premium discounts* and *credits*. A premium discount is a reduction given to those who meet the carrier's specific risk profile. First-year physicians or part-time physicians may qualify for such rate discounts. Premium credits require a specific action on the doctor's part in order to receive a reduction in premiums.

Credits may be linked to attending continuing education or risk-management courses. Programs such as specialized training, "bullet-proof" informed consent forms, and state-of-the-art record-keeping systems with careful patient follow-up are especially beneficial, says Mr. Quinley. Credits for these programs can help lower premiums now and avoid liability claims later.

Many carriers provide physicians with up-to-date risk-management information, such as monthly newsletters and special reports that cover specific topics for implementation in the medical office. Many of these risk-management education plans are designed to help physicians and their staffs better identify, understand, and respond to potential liability hazards.