Washington Healthcare News

wahcnews.com | Articles, Interviews and Statistics for the Healthcare Executive

VOLUME 4, ISSUE 9 SEPTEMBER 2009

Errors & Omissions Insurance: What Managed Care Organizations Must Know

By Steve Couch
Principal
MedRisk, LLC

For the most fortunate of managed care organizations (MCOs), professional errors & omissions (E&O) liability insurance receives little attention except at annual policy renewal time. For the less fortunate - for those at the wrong end of a lawsuit - their E&O insurance policy will play a key role in minimizing the financial loss incurred as a result of a claim.

The purpose of this article is to help MCOs better understand:

1. Their exposure to professional E&O liability
2. How to minimize exposure to E&O claims
3. Simple insurance buying tips

The Managed Care Liability Exposure

Traditional areas of managed care risk include:

- **Medical negligence:** If a managed care organization (MCO) employs medical providers, the organization can be held liable for injury arising out of direct medical care.
- **Peer review:** An employed physician is terminated from the plan's panel without the organization following its own peer review procedures.
- **Credentialing or provider selection:** A subscriber is injured by a panel physician with a documented history of incompetence.
- **Antitrust:** A provider owned health plan controls a significant portion of the services available in a geographic area, then charges competing plans unreasonable fees for those services.
- **Vicarious liability:** If a patient/subscriber reasonably believes that a negligent provider is employed by or is acting on behalf of an MCO, then the plan may be held liable for the negligent actions of that provider.
- **Utilization review:** A physician recommends a certain course of treatment and the plan wrongly denies the recommendation, resulting in complications or injury to the subscriber.
- **Conflict of interest:** For economic reasons, health plan refuses to authorize a reasonable, but costly course of treatment.

Recent Developments – Class Actions

In addition to the traditional risks listed above, class action suits are also on the rise. In a recent newsletter, Kristin McMahon, Esq. of IronHealth, a leading underwriter of managed care E&O, cites the ongoing class action relating to Usual and Customary Rates (UCR) for out of area benefits. She states, "the extraordinary amounts paid by health insurers,… the sizable plaintiff attorney fee awards and the Attorney General's adverse findings … will undoubtedly embolden the plaintiff's bar in their pursuit of other UCR class action defendants."

http://www.ironshore.com/onpoint_ironhealth/onPoint_vol1_iss3.pdf

In a 2006 study, another leading underwriter, OneBeacon Professional Partners also suggests there is a trend away from bodily injury related claims toward business practices related claims. This shift has resulted in a dramatic rise in defense costs due to the complexity of these cases.

http://www.onebeaconpro.com/insights/insights_vol7.pdf

Minimizing Exposure to E&O Claims

There is no sure method of avoiding E&O claims, but Alice Johansson of IronHealth offers a few helpful hints.

- MCOs should be as transparent as possible in their dealings with both members and providers. Both should know what to expect from the organization and there should be as little ambiguity in contracts as possible.
- MCOs should have up-to-date, well communicated policies and procedures and be as consistent as possible in carrying these out. Exceptions can create litigation issues down the road.
- Strive to build positive and pro-active relationships with the regulatory agencies.

Tips on Buying Insurance

A good insurance broker will direct you to the strongest underwriting companies and guide you through the minutiae of renewal applications and forms, but there are some overriding principles that can help make your organization a more attractive applicant.

It is important to shop for competitive insurance bids at reasonable intervals. Ms. Johansson recommends, "It is appropriate to survey the market every 2-3 years … to assure that coverage is as up-to-date as possible and is at a market competitive price. However, marketing every year can lead underwriters to not take the opportunity seriously."

John Riordan of OneBeacon Professional Partners makes another suggestion. "Probably the biggest missed opportunity is not sharing enough information. Be forward and generous with any information in order to receive the most appropriate risk management plan, coverage and pricing."

Summary

As with any business relationship, a key to a successful insurance program is good communication. When there are material changes to your organization or operations, let your broker know. There may be coverage enhancements available to cover a new service or entity.

If incidents arise that could possibly develop into a claim or lawsuit, speak up! Your underwriter may appoint an attorney at no additional cost to help you resolve a challenging situation. Your managed care professional E&O insurer has the same goals as you – to manage your exposure and to resolve potential claims as quickly and efficiently as possible.

Steve Couch is a Principal with MedRisk, LLC. The firm specializes in healthcare related insurance risk such as reinsurance, stop-loss, errors & omissions, and directors and officers. Steve can be reached by phone at 503-657-7475 or by email at scouch@medriskllc.com.