

Risk Retention Groups: Weighing the Risks

During the last year, many of MLMIC's policyholders have received solicitations from Risk Retention Groups (RRGs) promising lower premiums. When considering the professional liability covered offered by an RRG, physicians should be aware of the risks involved and should understand how the type of coverage presented relates to the amount of premium to be paid. We suggest physicians carefully evaluate their current coverage and premiums and compare them with those of an RRG in order to gain a full understanding of the differences between programs. Below are some key considerations:

Q. Are RRGs eligible for protection by the NYS Property/Casualty Insurance Security Fund (guaranty fund) in the event of their insolvency?

A. No. Because RRGs are not licensed in New York State, their policyholders are not protected by the State's \$1 million per claim guaranty fund in the event the RRG becomes insolvent. The guaranty fund, which acts as a safety net, protects MLMIC's insureds for the risks covered by their policies.

Q. Can physicians still get free excess coverage if they become insured by an RRG?

A. No. Physicians who purchase primary coverage from an insurer not licensed by NYS (like RRGs) do not have access to \$1 million of excess coverage provided by the State. Excess coverage is currently provided at no cost to physicians who purchase primary limits of \$1.3 million each person and \$3.9 million total aggregate from a New York State licensed insurer and who complete the required risk management course.

Q. Is the occurrence form of coverage available with an RRG?

A. Typically no. In fact, RRG premium quotes may appear to be a fraction of current MLMIC premiums due to the fact that RRGs are not comparing 'apples to apples.' They propose to move the insured from the occurrence form of coverage to either a first year claims made or claims paid (sometimes referred to as "paid claims") policy. Because claims made and claims paid policies cover a subset of the claims covered by an occurrence policy, they cost less for the first few years. They only give the illusion of cost savings, because both forms would require the purchase of a "Tail" to protect for any subsequently reported claims should the policy be cancelled.

Q. What coverage forms are offered by MLMIC?

A. MLMIC offers a choice of either the occurrence or claims made coverage forms as required by The New York Insurance Law. The claims paid (or "paid claims") form is not offered by carriers licensed in the state because this form of coverage is not permitted by New York Insurance Law.

Q. What is the difference in protection afforded by the occurrence, the claims made, and the claims paid policy forms?

A. Occurrence coverage offers the most comprehensive protection, covering an insured when an incident occurs while the policy is in effect, regardless of when it is reported or paid.

Claims made covers an insured when an incident is reported while the policy is in effect, regardless of when it is paid. It is less comprehensive than occurrence, since it does not cover unreported claims if continuing coverage is not maintained, and, therefore, it costs less than occurrence for the first few years. If the insured wishes to be protected for unreported events, tail coverage must be purchased.

Claims paid, a new form of coverage offered by some RRGs, is the least comprehensive. It covers an insured only when an incident is paid while the policy is in effect. Because it covers considerably less insurance risk initially than claims made or occurrence, it is considerably less expensive than either of these forms for several years; however, it is the insured who assumes the responsibility of unpaid and unreported claims if continuing coverage is not maintained.

Obviously, this creates significant risks for the insured, which they would then bear. Like claims made coverage, the insured could opt to purchase tail coverage to be covered for unpaid or unreported claims.

Q. Does New York State regulate RRGs?

A. No, this means that an RRG's claims handling practices, policy forms, and premium rates are not subject to New York State Insurance Law. Therefore, unlike licensed New York State carriers, RRGs may change their policy terms or premium rates at any time without filing and receiving approval from the New York State Insurance Department. Furthermore, policy and rate changes may be implemented without meeting the notice requirements found in New York State Insurance Law.

Q. Are there any other fees required to become insured by an RRG?

A. In many cases, yes. By law, RRGs must be owned by their insureds and most require insured to make a capital contribution for several years, in addition to their annual insurance premiums. This money is at risk and its return is not guaranteed.

Q. Will insuring with an RRG jeopardize a physician's privileges at affiliated hospital(s)?

A. Possibly. Since insurance purchased from an RRG is not regulated by the State, it may differ from what is customarily offered in New York and may well be of significant concern to hospitals granting staff privileges, particularly if the hospital believes it increases its exposure by accepting RRG coverage. It also depends upon the medical staff by-laws and the hospital's credentialing requirements.

The answers to the questions posed above indicate that a number of issues and concerns are present with the RRG form of insurance. Therefore, it is very important for physicians to thoroughly analyze all aspects of this type of insurance before deciding to make any changes to their current program. In many cases, what appears to be a more cost effective option, could, ultimately, lead to even higher costs and greater risks to the physician. Physicians who are considering transferring their coverage to an RRG should first contact a MLMIC underwriter at one of the offices listed below. MLMIC underwriters are available to answer any questions physicians may have and can be reached at an office nearest your practice location.

New York	212-576-9670
Syracuse	315-428-1188
Latham	518-786-2700
East Meadow	516-794-7200