



Risk Management for the Health Care Provider

Presented by:
Marie Gaudette, CIC, CPIW

Overview

- The difficulty in providing Risk Management in the Home Care; Hospice and Staffing settings.
- Risks you assume in contracts. Additional Insured's and requests for Primary coverage and/or Waivers.

Emerging Liabilities

- Increased need to provide client transportation services.
- New services being provide by Homecare and Hospice providers (for example – Physicians; High Tech Care; Telemedicine).
- Contractual Liability issues. Let's talk about what it means to add an "additional insured" to your policy. Also, requests to provide "waivers of subrogation" (What do these mean to you?).
- Increase in abuse allegations trending along with increased use of unskilled caregivers.

3

Contractual Liability Concerns

- OK – you've all had requests to add A/I's to your insurance policies, but do you really understand what that means and what coverage YOU are providing to THEM?
- 1) What is an A/I and how does that change your insurance policy?
 - 2) Why should your carrier be questioning you and/or your contracts?

4

Additional Insureds

- When you agree to add another entity onto your insurance policy as an A/I – you are amending your insurance policy contract to include them within the definition of “insured” under your policy form.
- You are now sharing your liability limits with your additional insured.
- Claims that are paid on behalf of your A/I, will be held against you in your loss ratio.

5

A/I's Have Access to your Policy

- Once your policy is endorsed to add an A/I to it, they may have direct access to your policy for both defense and settlement.
- Your carrier will also now have a “duty to defend” your additional insured under your policy.

6

Sample PL A/I Wording

ADDITIONAL PARTY(S) COVERED ENDORSEMENT

In consideration of the premium charged, it is hereby understood and agreed that the following listed Additional Party(s) Covered shall be considered in the definition of **you** in this policy, but solely with respect to their liability for activities of the Named Insured named in item #1 of the Declarations of this policy.

It is further understood and agreed that this insurance does not apply to any other liability of the Additional Party covered and this inclusion shall not serve to increase **our** limit of liability.

LIST OF ADDITIONAL PARTY(S) COVERED

All other terms and conditions of the policy remain unchanged.

7

Sample CGL A/I Wording:

Sage Document: ISO-Forms | Category 20-Additional Insured Endorsements | CG 20 26-... Page 1 of 1

ISO | Commercial General Liability Forms | 07/01/04
POLICY NUMBER:

**COMMERCIAL GENERAL
LIABILITY**
CG 20 26 07 04

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

CG 20 26 07 04

© ISO Properties, Inc., 2004

©Insurance Services Office, Inc.
©2010 Vertafore, Inc. All Rights Reserved.

8

Is it a Reasonable Request?

- It seems that more and more contracts are requiring that they be named on your policy as A/I. We need to look at these contracts to see if this is really necessary.
- Often times this can be something that is negotiated in a contract.
- What is the exposure to each party in the contract?

9

Primary / Non Contributory

- We have seen a large increase in the number of A/I's that are requesting your policy to provide them with "Primary / Non-Contributory" coverage. What this means is that your policy will indemnify them on a primary basis. This is their way of getting around the "other insurance" provision.
- Do you want to provide "primary" coverage?

10

Waivers of Subrogation

- When an A/I requests a Waiver of Subrogation from you, this should set off red flags for you and your carrier.
- If you provide this in your policy by endorsement, your carrier will not be able to subrogate any portion of the claim, even if the A/I was partially responsible or “at fault” for part of that claim.

11

Sample Waiver Wording:

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or “your work” done under a contract with that person or organization and included in the “products-completed operations hazard”. This waiver applies only to the person or organization shown in the Schedule above.

12

Steps to Help Mitigate Large Claims

- Run annual MVR's on all employees that may drive during the course of business. What liability do you assume when you transport a patient? What types of patients will you transport and where?
- Establish written guidelines for employee performance. Job descriptions. How do you follow up with patients regarding the services they receive from your staff?
- Written procedures for employees on what to do in the event of a claim or incident.

Note-Each of these practices directly and positively impact WC claim frequency and claim cost

13

Difficulty Providing Risk Management in Homecare & Hospice

- Because most services are provided in the patient's home and not in the client's office, there is less supervision and control.
- The high turnover ratio of employees for HH and Hospice makes effective RM harder to monitor. Employee training and continuing education is also more difficult. When staffing a facility – your staff is subject to supervision by non-related parties – often with other interests in mind.

Solution: Build employee loyalty through staff development, operational and safety involvement, regular communication and a fair benefit package

14

Educating Staff

- Implementation of an ever-evolving Risk Management plan tailored for your agency. Use benchmarking of key parameters to track leading success/failure indicators.
- Continuing education of staff. What training is available to your staff? What can your carrier assist you with here?
- Adequate hiring; screening and supervision of staff prior to placements. (This would include background checks, reference checks, license verification, and drug & alcohol screening policies).

15

Continuing Education

- Understanding the risks involved in providing different services. (Physician services, Telemedicine, High Tech Home Care, Client Transportation services, etc)
- What resources are available to you through your associations?
- Communication with your caregivers and your clients, as well as with your insurance carrier.

16

Goals of Risk Management

- Identify the High Risk / High Liability areas for your business.
- Build a comprehensive Risk Management Program to address patient care issues; liability issues; compliance issues; employment issues and financial issues.
- Recognize the importance of front-end, preventative steps to control patient care liabilities.
- Contractual review policies. How important is that contract? Can we negotiate better terms? Can our carrier help us? Do I have the insurance in force that I'm agreeing to in the contract?
- Do my employees carry their own PL insurance? Can this help?

17

High Risk Liabilities

1. High Tech Care in the Home – Do I have the properly trained and qualified staff to provide these services to my patients?
2. Pediatric Care – Keep in mind, these claims cost more!
3. Supplemental Staffing Services (Think about where you are staffing – are they in good financial condition? Do they have their own insurance? How safe is their facility? Are they monitoring your staff?).
4. Client Transportation Services – Who maintains the vehicles? Are the vehicles properly insured? Are my drivers skilled enough to handle unique driving situations?
5. Physical and Sexual Abuse – How do I prevent these claims?
6. Physician's making home visits – Credentialing? Services?

18

CGL Claim Examples

Close Date of Claim	Description	Total Paid
3/6/2006	CLMT ALLEGES THAT SHE WAS CAUSED TO BE PRICKED BY A SYRINGE THAT WAS NEGLIGENTLY LEFT ON TABLE	\$180,163.10
8/5/2008	ALLEGED TRADEMARK INFRINGEMENT	\$606,405.68
8/28/2003	Insd allegedly caused fire at clmts residents	\$146,596.62
10/2/2007	ALLEGED TRADEMARK INFRINGEMENT	\$589,437.24
6/15/2004	CLAIMANT ALLEGES INJURY TO LEG DUE TO INSURED'S NEGLIGENCE.	\$301,638.31
1/22/2008	CLAIMANT ALLEGEDLY FELL IN FRONT OF INSURED PREMISES.	\$327,467.40
1/13/2006	CLAIMANT TRIPPED OVER POWER CORD THAT ALLEGEDLY INSURED HAD PLACED.	\$226,233.49
4/14/2010	DURING TRANSFER, PATIENT FELL ON CLAIMANT. CLAIMANT SUSTAINED SERIOUS PERSONALI NJURIES.	\$1,122,813.09
10/28/2008	CLAIMANT ALLEGES INSURED REMOVED EQUIPMENT FROM HOME WHICH RESULTED IN DEATH OFC LAIMANT.	\$811,371.55
11/9/2007	BLDG INSD IS IN CAUGHT ON FIRE	\$442,790.86
7/13/2009	SUBRO FROM LANDLORD'S INSURER REGARDING FIRE DAMAGE ARISING OUT OF A FIRE THAT STARTED ON INSURED'S PREMISES	\$111,248.85

19

PL Claim Examples:

Loss Dt	Loss Description	Claim St	Ind Pd	Legal Paid	Total Incurred:			
5/6/2004	PT RECEIVING NARCS VIA PUMP, CODED, ON LIFE SUPPORT.				GA	\$1,200,000.00	\$155,565.24	\$1,355,565.24
3/22/2000	WRONGFUL DEATH OF 1 Y/O	AL		\$1,000,000.00		\$290,324.10	\$1,290,324.10	
4/10/2001	TRACH FELL OUT, PASS BRAIN DAMAGE	FL		\$1,000,000.00		\$22,522.48	\$1,022,522.48	
1/9/1999	L.O.C. DURING BLOOD DRAW, FELL, HIT HEAD & NECK, PARALYSIS	MN				\$1,000,000.00	\$45,742.95	\$1,045,742.95
1/16/2004	MED ERROR, CARDIAC ARREST.	NC		\$1,000,000.00		\$113,312.72	\$1,113,312.72	
6/11/2000	NEGLIGENT ADMIN OF GENTAMYCN LEADING TOO TOTOXICITY, VESTIBULOPATHY, AND NEPHROPATHY / KIDNEY TRANS?							NV
12/13/2001	PLAINTIFFS ALLEGES: FAILURE TO PROVIDE ADEQUATE CARE DURING LABOR AND DELIVERY. THE BABY WAS ADMITT							TX
7/1/2000	W/C CUSHION DEFLATED, PRESSURE SORE, SURGERY.				NE	\$900,000.00	\$60,075.12	\$960,075.12
4/17/1999	ANOXIA, RESP. FAILURE, DEATH	WA		\$900,000.00		\$69,147.07	\$969,147.07	
11/23/2005	FAILURE TO PREVENT ELDERLY PATIENT FROM FALLING, RESULTING IN CEREBRAL HEMORRHAGE AND DEATH			\$865,287.27		\$393,469.23	\$1,258,756.50	FL
3/27/2003	INSURED EMPLOYEE PROVIDED HOME HEALTH CARE TO COREY TOOK HIM HOME W/HER FOOT SEVERED BY LAWN MOWER			\$800,000.00		\$268,701.53	\$1,068,701.53	IL
8/25/2000	NERVE INJURY FROM INFXXN	FL		\$750,000.00		\$87,076.54	\$837,076.54	
3/16/2001	FL 766 - NEGLIGENT TREATMENT R/I DEATH.	FL		\$687,500.00		\$87,812.03	\$775,312.03	
3/27/2001	2ND AND 3RD DEGREE BURNS FROM HOT WATER CHILD HAS CP	PA				\$675,000.00	\$26,442.66	\$701,442.66
6/8/1999	FXD HIP OR LEG WHILE BEING TURNED.	MS		\$650,000.00		\$24,427.24	\$674,427.24	
11/12/2001	HYPOXIC BRAIN DAMAGE	FL		\$630,000.00		\$86,455.03	\$716,455.03	
6/5/2002	PT STOLE NARCOTICS FROM STAFF NURSE, GAVE THE DRUG TO ANOTHER RESIDENT WHO OVERDOSED AND DIED.			\$600,000.00		\$273,287.23	\$873,287.23	IL
9/2/2008	NOI RE: ALLEGED NEGLIGENCE R/I FATALITY.	FL		\$500,000.00		\$48,072.80	\$548,072.80	
12/12/2002	MED O.D.: DEATH, FL			\$500,000.00		\$4,891.14	\$504,891.14	
10/1/2001	ALLEGED NEGLIGENCE DURING VACUUM EXTRACTION BIRTH R/I BRAIN INJURY				IL	\$500,000.00	\$230,809.90	\$730,809.90

20