

# Are You Covered?



DON'T TAKE CHANCES ON PROFESSIONAL  
MEDICAL LIABILITY COVERAGE

BY ARTHUR SEIFERT CPCU, CIC, RPLU

**T**he assisted living industry is weathering a tough insurance marketplace. Frustrated with rate increases, some owners are looking for lower premiums without regard for the coverage being provided. Some companies are selling stripped-down policies to create a price advantage and capture market share. But before jumping at a low price, consider what you're buying.

Consider this scenario: One of your employed Registered Nurses performs the initial assessment for a new resident. Upon completing the assessment, he drafts a service plan for the resident. The RN's assessment doesn't recognize the new resident as being at risk for falls.

Several weeks later, and after two fall incidents, the resident falls and breaks her hip. The medical examination reveals that she has been taking a prescription drug, benzodiazepine, as prescribed by her doctor. The assessment never mentioned the resident as being at risk for falls or that she was currently taking benzodiazepine as prescribed. The resident family is suing on the basis of negligent assessment.

Are you covered?

Here's another example. A skirmish breaks out in the dining room. One of your residents has hit another resident with a plate, rendering the injured resident unconscious. As your RN pulls the resident away from his victim, she hears him say, "I've done it before and I'll do it again to anyone that sits in my seat." The injured resident is transported to the hospital by ambulance and later dies due to complications related to head trauma.

As you investigate the circumstances, you discover the violent resident had been discharged from two former facilities because of an inclination toward violence. You check the assessment that was performed by one of your employed RNs and can't find any reference to previous discharges or violent behavior. There is a note in the file mentioning the admitting of the violent resident clinched the company's occupancy goal. The family is suing based on negligent assessment.

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One of your staff RNs accompanies an Alzheimer's resident into the courtyard and then leaves for a period of time leaving the resident unattended. The resident is later found in a reflecting pond with a broken hip and lung complications related to intake of water while face down in the pond. The family is suing citing negligent care.

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One of your staff RNs responds to a resident call in the middle of the night. She finds the resident is suffering from a nose bleed. The nurse arrests the bleeding and leaves the resident. In the morning, the resident is found comatose and suffering complications related to severe blood loss.

As you dig into the circumstances, you uncover a medica-

tion error. Your staff has been negligent in the administration of the resident's medication, giving her another resident's very high dose of Coumadin. The family sues on the basis of wrongful medication administration.

Are you covered?

The examples above are actual cases in which facilities were cited for negligence in the care of their residents. There has always been a blur to consider when providing coverage to an assisted living facility. Many claim they do not have a medical model, but does this mean they have no medical professional exposure?

General liability coverage will almost always exclude damages resulting from a professional act of failure to act.

Professional liability will almost always exclude damages caused by bodily injury. Unless coverage between the professional and general liability is correctly blended, you will have both policies seeking to exclude coverage while pointing to the other policy. The end result is an uncovered claim.

Do your policies cover medication administration errors, wrongful assessments, and other types of medical professional claims? Unfortunately, policies are being sold today that purport to provide medical professional coverage, but when medical professional claims arise, restrictive policy language is being cited to deny coverage.

## SCRUTINIZE YOUR COVERAGE

Many insurance companies today are writing medical professional liability insurance on a combined basis with the general liability. When reviewing your policy with your professional insurance agent, look in the insuring agreements, the exclusions, and the definitions to determine the real scope and intent of coverage. Also review any attached endorsements carefully; they are typically employed to reduce coverage. Here are some tips:

1. Read the insuring agreement first.
2. Read the definitions section to determine the exact definition of key terms.
3. Check the exclusions to see if coverage has been reduced or eliminated by the exclusions.

Consider this statement in an insuring agreement: "We will pay those sums the insured becomes legally obligated to pay as damages or because of **bodily injury**, **medical incident**, or **property damage** to which this insurance applies..." Any terms in parentheses or in bold font are defined terms. The exact definitions of those terms are found in the definitions section of the policy. When reviewing a combined GL/PL policy, be sure the term **medical incident** is in the insuring agreement.

As stated earlier, medical incident should be a specifically defined term. Make sure the definitions include coverage for:

- The furnishing of food, beverages, medications, or applications in connection with such services;
- Failure to comply with any right of a health-care facility resident under any state law regulating your business as a resident health-care facility; and
- Failure to comply with any right of a resident as included in the U.S. Department of Health and Human Services regulation governing participation of intermediate facilities and skilled nursing facilities regardless of whether your business is subject to such regulations.

You want to be sure you have coverage for medication errors and violation of state and federal regulations designed to protect the rights of elderly residents. Medication furnishing and monitoring is a coverage you want to be sure is provided.

For the actual medical professional liability claim outlined earlier, there may be no coverage afforded unless your policy specifically defines medical incident to include medication administration. Be a prudent buyer and ask your professional insurance agent to show you the definitions section of the policy. Know how key terms like medical incident are defined.

What's the lesson? Make sure you're getting what you paid for (and/or getting something worth paying for); you need to ask your agent some tough questions. You have the right and the obligation to your company to request coverage clarification. Ask the agent to provide you with the definition of medical incident. Make sure your policy will cover negligent assessments and medication errors; these are very ripe causes being cited by the plaintiffs bar. It is up to you as the owner to make sure you are covered. Work with your agent and ask the insurance company the tough questions.

## DON'T CUT CORNERS

While assisted living and other senior housing owners have been mired in this tough insurance market, the pressure of the market has yielded positive growth in the awareness

among owners of the risk they assume on a daily basis. As a result, investment in loss control, risk assumption, and other forms of risk management is at an all-time high. Now is not the time to take chances with "bargain policies." There's nothing wrong with a bargain if the buyer fully understands what is being purchased. Make sure you get what you paid for by asking the tough questions, and be sure you allocate resources wisely. ◀

### AT A GLANCE

- ▶ Policies are being sold today that purport to provide medical professional coverage, but when claims arise, restrictive policy language is being cited to deny coverage.
- ▶ Ask your insurance agent to show you the definitions section of your policy. Know how key terms like medical incident are defined.
- ▶ This tough insurance market has prompted assisted living providers to make stronger investments in loss control, risk assumption, and other forms of risk management.

Arthur Seifert CPCU, CIC, RPLU is president & CEO of The Lighthouse Companies in Annandale, VA. Reach him at 703/770-3700 or [aseifert@lighthousecompanies.com](mailto:aseifert@lighthousecompanies.com), or visit [www.lighthousecompanies.com](http://www.lighthousecompanies.com) for more information.