

What's Wrong With Teleradiology Insurance?

By Kenneth A. Klubnik

Recently, I was contacted by the decision-maker of a radiology practice. He had one simple question: Was it industry standard for teleradiology companies to have a “shared-limits” medical liability insurance policy?

The Ohio healthcare system with which he was working was about to contract teleradiology services when an adept team-member recognized that the prospect telecompany had a shared-limits medical malpractice insurance policy.

The answer to his question was “no” — the shared-limits policy was no longer industry standard — and a discussion ensued as to the hazards of the share-limits policy.

In short, teleradiology is the transmission of digital radiograph images from the location of the image origination to the location of the interpreting radiologist. The digital transmissions travel across state lines and even across country borders for reading.

A decade ago, it was difficult for telecompanies to secure medical malpractice insurance. The policies available were skinny requiring deductibles, shared-limits, written-demand triggers and no consent-to-settle clauses. Back then, we could insure preliminary interpretations only. Final reads were a no-go. Start-up companies and individuals were out of luck, and certainly mammography was off-limits.

Today anything goes with crafting an insurance policy for teleradiology. Start-ups, individuals, and hybrid-radiology practices can all find policies. Coverage is available for prelims and finals and even telemamm-only organizations can find insurance protection. First-dollar coverage is available as are

individual limits, consent clauses, and incident triggers.

Historically, the most common form of teleradiology insurance has been the *shared-limit policy*:

- The telecompany is the Named Insured and the teleradiologists are either listed or scheduled.
- The policy has limits of \$1.0 M per occurrence, per loss event / \$3.0 M per physician aggregate / and some level of a policy aggregate. It is called a “shared limits” policy because the occurrence limit is capped at \$1.0 M regardless of the number of insureds named in the lawsuit.
- Thus, whether one radiologist or nine radiologists are named in a lawsuit, the shared-limit policy will have \$1.0 M available for each claim.

The trouble with this policy form is that they do not comply with most hospital by-laws, and for those states whose medical licensure require proof of insurance, invalidate the medical license. (Questions remain as to whether a shared-limits policy satisfies the requirements with managed-care and third-party payers.)

This is discomfoting for hospitals, radiology practices, and imaging centers directly contracting with a teleradiology company. When a claim is filed naming more than one teleradiologist and the primary insurance company responding only has a \$1.0 M shared limit on the table, the plaintiff will immediately look elsewhere — for a deeper pocket. All find themselves in a situation where the telecompany’s claim limit may not be enough to satisfy the demands of the plaintiff — even when the radiology practice and imaging center did not provide a consult.

Even more troubling is medical licensure when a state mandates medical malpractice insurance for the right to provide medical services in their state. In these cases, the states are specific that the medical liability policy should have individual limits. While Ohio does not have such a mandate, our neighbor, Pennsylvania does. If a radiologist secures a Pa medical license and provides a Certificate of Insurance from a shared-limits malpractice policy, s/he has violated the Commonwealth’s statute and the medical license becomes invalid.

Imagine a plaintiff lawyer, standing in a court room, waving a telecompany’s insurance policy in the air and claiming it does not meet the hospital’s by-laws or the state medical society’s licensure requirements and that quite possibly - the subject state license is invalid. This is a nightmare scenario for the defense as it must now spend considerable time explaining to a jury the nuances of the telecom’s insurance policy and business model — including the need to be licensed on both sides of the transmission.

So what’s a hospital, radiology practice or imaging center to do? To be certain, requesting the customary Certificate of Insurance is not enough. Many of the Certificates simply do not present the insurance policy properly and many intermediaries (and telecoms) do not understand the policy. Rather, the Declarations Page or the whole Policy must be reviewed to ascertain the limits available. Not to do so, is, well — Buyer Beware.

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