If you are a physician or administrator who’s pressed for time and resources, it can be tough to discern exactly what your medical malpractice coverage should contain, much less what type of policy to purchase.

As you look for ways to reduce expenses by comparing the rate you’re paying to what’s available in the marketplace, you may realize you’ve lost hundreds, even thousands of dollars in premium paid per year. You may realize you’ve been taken advantage of through various policy clauses forcing you to settle when they perhaps could have won your case. These situations are completely avoidable.

Non-admitted carriers are not safeguarded by the state’s guarantee fund, and do not offer this additional layer of protection.

**8 Carrier and Policy Features to Ask About Before Making Your Decision**

**1. Admitted Carriers vs. Non-Admitted Carriers**

An admitted carrier is an insurance company that is both licensed and regulated by a State Department of Insurance. When a company is an “admitted” carrier, its insureds are protected by the state’s guarantee fund. If an admitted insurance company were to go bankrupt, the guarantee fund provides certain protection for the affected insureds.

Admitted carriers can be easily verified by contacting your state’s Department of Insurance.

Non-admitted carriers are not safeguarded by the state’s guarantee fund, and do not offer this additional layer of protection.

**2. Financial Stability**

Physicians typically analyze insurance companies based on A.M. Best Company’s ratings, and its ratings are considered an industry benchmark. Medical malpractice insurance policies offered by Capson Physicians Insurance (Capson) in eight states by Farmers agents will be issued by a member company of American International Group, Inc. (AIG), an A rated insurer by A.M. Best. When comparing policies, physicians should seek out a carrier with an A rating.

Also, look at the company’s reinsurance partners. Support from A rated reinsurers demonstrates a successful track record of balancing risks, a strong financial past, and most importantly, a solid financial future.

Capson partners with internationally recognized A rated reinsurance carriers, including Beazley, Hannover Re, Alterra Re, and Ren Re, who protect the company by removing the majority of financial risk associated with claims payments from Capson.
Reinsurance provides protection and our relationship with these A rated reinsurers is reflective of the fact that Capson maintains positive surplus, liquidity of invested assets, an acceptable level of financial leverage, reasonable loss and loss adjustment expense reserves, and adequate pricing.

3. Consent to Settle Clause

A consent-to-settle clause is a condition in which a carrier cannot settle a claim against an insured without the insured’s consent.

For example, if your policy does not contain a consent to settle clause, your carrier could settle a suit on your behalf simply because the cost of the defense might amount to more than the sum of the settlement.

4. Hammer Clause

In order to counterbalance an insured’s right to have the final say on a settlement, insurance policies may include a “hammer clause.” Hammer clauses act to force insureds to comply with a carrier’s decision to settle a case, rather than continue to seek options or go to trial. This clause informs the insured that if the insured does not agree to settle, the insured is responsible for any judgment won by the plaintiff, along with legal fees, that are above the amount that could have been settled.

5. Extended Reporting Period (Tail) and Prior Acts (Retroactive Period) Coverage

An extended reporting period, also called “tail” coverage, is an endorsement offered by a physician’s current carrier. It allows the insured physician to extend his or her coverage for a specified time period after the cancellation or termination of a claims-made policy. Tail coverage is offered at the termination of a policy, except when a policy is cancelled for non-payment. Tail costs are typically 150% to 250% of the annual policy premium, however, some carriers offer earned tail coverage upon retirement. This depends on the length of time the physician was insured by the carrier.

Prior acts coverage, aka retroactive period, is the earliest date for which a claim can be reported. Most carriers allow a physician to carry over his or her existing retroactive date to their new policy.

6. Locum Tenens Coverage

Locum Tenens coverage allows a physician to temporarily serve as a substitute for an insured physician. For example, at Capson, our locum tenens coverage will allow a physician to be replaced by another equally qualified physician up to 30 days on each policy period.

7. Regulatory Defense and Cyber Liability Endorsement

While this is a standard policy endorsement these days, it’s important to verify that it is included. This coverage is provided for medical board proceedings and regulatory proceedings brought against the physician by government entities for the enforcement of the Occupational Safety and Health Administration (OSHA), Emergency Medical Treatment and Labor Act (EMTALA), Clinical Laboratory Improvement Amendments (CLIA), Health Insurance Portability and Accountability Act (HIPAA), and Stark Laws. It should also be extended for Americans with Disabilities Act (ADA) proceedings and billing errors proceedings, including Recovery Audit Contractor (RAC) audits brought by government entities and commercial payers, if allowable in each state.

Cyber Liability coverage offers protection for Network Security & Privacy related exposures faced by physicians. Patient notification & credit monitoring costs, network security and privacy insurance, regulatory coverage and data recovery costs should be included in your coverage.


Last but not least, take note how defense costs are paid and how that may alter your coverage. Are they “inside” or “outside” the policy limits? Ideally, you want to select a policy with defense costs “outside” the limits of liability. This means that your defense costs will not erode your limits of liability that are there to protect you for an indemnity payment.

Does your medical malpractice carrier have your best interests in mind?

As a leading provider of medical malpractice insurance, it’s our hope that reading this guide will help you find and partner with the right carrier for your needs. By comparing carriers and following the advice in this guide, you can find an insurance provider with your best interests in mind.