Insurance for Your Pharmacy - Does Your Coverage Cover You?

Presented by:
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This program is approved by NCPA for 0.15 CEUs (1.5 contact hours) of continuing education credit. NCPA is approved by the Accreditation Council for Pharmacy Education as a provider of continuing pharmacy education.
Educational Objectives

Presentation Title: Insurance for Your Pharmacy – Does Your Coverage Cover You?

Name of Presenter: James R. Schiffer

1. Differentiate between traditional business liability insurance policies and pharmacy malpractice insurance policies;

2. Know how to review and examine the various coverages offered in their pharmacy insurance policies

3. Understand what a TORT claim is and who is a Tortfeasor;

4. Know the differences in coverage limits on a Claims Made policy versus an Occurrence Policy

5. Understand the importance of fully discussing with their insurance broker the various exposure pharmacists and pharmacy owners have as far as liability in their practice

6. Understand the financial risk that is at stake for failing to properly protect their pharmacy from the various types of litigation which can occur in their practice.
Insurance for your Pharmacy Practice…
does your coverage cover you?

James R. Schiffer, R Ph, Esq.
October 9, 2006

Why do we have insurance?

• To protect against unexpected losses

• To protect against unexpected claims

• To protect against the unknown catastrophic events that can happen to our pharmacy, and can happen to us as pharmacists.
What type of losses can occur?

- Electrical fire occurs wiping out your pharmacy;
- Flood occurs from a broken pipe (upstairs) ruining your computer and destroying documents;
- Automobile runs out of control through your front door;
- Mental patient goes berserk in pharmacy creating hostage situation;
- Delivery left in dangerous place causing a patient to fall and break hip

(These are just a few examples)

What kind of losses can occur?

- Your tenant above pharmacy breaks through ceiling stealing all of your controlled drugs
- You are held up at gunpoint and suffer a substantial financial loss
- You have a dishonest employee who is tapping into your cash receipts and merchandise and medications, severely hurting your pharmacy operation
What kinds of claims can occur?

• Since you are responsible for the well being of those whom entrust you to provide a safe environment when they visit your pharmacy as legal guests aka “invitees” of the pharmacy

• You may be the recipient of a negligence lawsuit for any of the previously mentioned incidents, plus many more. Welcome to the world of TORT LAW!

What is a TORT?

• A Tort is a civil wrong, some sort of harm which has been caused to an individual (or entity) and can be associated with a Tort-feasor (person or entity responsible for the harm) and normally is resolved by the payment of money to the individual or entity alleging the harm stated in the documents (lawsuit) – before or after litigation is started- on file at the courthouse. The harm can be physical, financial or mental harm and depending upon the type of harm there are different elements of the tort required under law.
Types of Pharmacy -TORTS

- Personal injury (slip, fall, dog bite, any injury while in or near pharmacy)
- Pharmacy Malpractice – dispensing issues
- Products Liability (defective products or failure to warn including OTC/HBA/RX items)
- Wrongs involving real property of others (nuisance against neighbors property)
- False imprisonment of customers i.e., alleged shoplifters, alleged passers of forged prescriptions (may be negligence or intentional)
- Intentional wrongs, assault, battery

Pharmacy Torts Continued..

- Alleged unfair competition, stealing trade secrets, i.e., stealing the formula for Kentucky Fried Chicken, the formula for Coca Cola, stealing pharmacy clients
- Violations of one’s privacy, intrusion on seclusion, publicity placing person in false light, (in addition to HIPAA violations)
- Violations of one’s civil rights (federal offense)
4 elements of a TORT

#1 Duty, the accused must owe a legal duty to the victim, which is legally enforce-able obligation to conform to a strict standard of conduct. The standard for such is the “Reasonably prudent person” rule.

#2 Breach of that Duty, the accused must have broken or breached that duty.

#3 Causation, the breach was the cause of an injury to the victim. Causation does not have to be direct, the accused action or failure to act can begin a sequence of harmful events that cause the injury, thus the term Proximate Cause is used to describe the breach.

#4 Injury The victim must have an injury, either physical, mental or financial.

Do’s & Don’ts for your Pharmacy Insurance

• Do make sure your insurance coverage protects you against the exposure and dangers of your pharmacy business practice, go over each concern with your agent before signing the policy.

• Don’t just get the policy and put it in the file cabinet. Discuss your concerns with the agent after the policy is in hand. You may find your anticipated protection is not actually covered in your policy.
Do’s and Don’ts continued

• Do verify this one: Pharmacy Malpractice coverage is sometimes overlooked. Make sure your policy covers such events. Inquire of your agent to verify and ask what policy riders are required if any for such coverage and make sure you have them. IMPORTANT: Find out what you need to do in the event of a possible malpractice issue arising at your pharmacy.

• Don’t switch policies from year to year without verifying the continuity of continued coverage—especially malpractice—from one company to another.

Important Distinctions

• Pharmacy Malpractice issues:

• Claims Made policy vs. occurrence Policy

• Do you know the difference?
Claims Made Defined:

• Claims made policies cover claims brought forward during a given period of time (the policy term). If the loss is reported years later, due to various reasons, the loss may not be covered under this type of policy. Claims made policies are considered a less expensive method of coverage but they carry added risk.

Occurrence Defined

• These policies protect the insured for the period of time under the policy coverage window, regardless of when the actual loss is reported. If you have a young child that receives medication that turns out to harm that child, the child has additional time to bring forward any litigation (depending upon the location of the injury) until the child reaches adulthood.
Additional Important terms

• **Tail Insurance:**
  If you have a claims made policy and want to change insurance carriers, you need to purchase tail insurance to carry your protection forward past the expiration of the claims made period. Tail insurance is not always offered and may not protect you against claims brought many years later.

Additional Important terms

• **Nose Coverage:**
  this coverage does the same type of coverage as tail insurance for the transition from Claims Made to another policy. However Nose coverage is traditonaly offered by the incoming insurance carrier. It too has limited value in claims brought several years later.
Important Tips

• Make sure you know what type of malpractice coverage you have, claims made or occurrence.

• After you learn the type you have, make sure you do not jump from one carrier to another without checking the type of coverage you are offered. Make sure there are no gaps in coverage.

Important Tips continued

• Make sure you have the coverages for your area that cover typical claims, ie, flood coverage, tornado coverage, and if not traditionally available learn how to obtain these policies if you require these protections.

• Also make sure you have the traditional liability coverage for slip and falls and product liabilities that may occur.
3 true pharmacy horror stories you need to hear about

• Fatal Dispensing Error – litigation – has malpractice but changed carriers both refuse to cover – what do you do?

• Non Fatal Dispensing Error- threatened litigation- has malpractice coverage but refused by carrier, what do you do?

• Drug Recall exposure- litigation- no malpractice coverage what do you do?

Questions and Answers

Thank you for your attendance and hopefully this has been helpful in your pharmacy practice.

Jim Schiffer
provide Medicaid benefits. In fiscal year 2005, CMS' total staff resources allocated to these activities was about 8.1 full-time equivalent employees.

(5) CMS lacked specific goals for Medicaid fraud and abuse control, which raised questions about its level of commitment to improve states' activities in this area.

(4) Federal oversight of a state's Medicaid program safeguards would not occur, at best, more than once every seven years.

(5) Despite the millions of dollars CMS received annually from a previously established fraud and abuse control system, General Daniel R. Levinson and U.S. Attorney General Alberto Gonzales. In the letter, Senator Grassley urged the federal government to help states qualify for the new financial incentive in Section 6032 of the DRA. He also expressed concern over the second element listed above: that the state law be at least as effective as the Federal FCA in rewarding and facilitating whistleblower actions for false claims. Senator Grassley indicated that it had come to his attention that many state legislatures are in the process of enacting State FCAs in accordance with Section 6032 of the DRA, and that they are attempting to modify and deviate from the Federal FCA provisions. He expressed concern that the changes
programs, as defined in Section 1128B(f) of the Social Security Act.\textsuperscript{13}

(3) Include, as part of their written policies, detailed...
(9) There has not yet been any rulemaking relating to these DRA mandates, at either the state or federal level. While these provisions are sweeping, there is no guidance as to the federal government’s and states’ practical expectations toward healthcare entities under the DRA.

The Medicaid Integrity Program
Section 6035 of the DRA establishes a new Medicaid Integrity Program, modeled after the longstanding Medicare Integrity Program. The DHHS will promote integrity in the Medicaid program referenced above, and the effectiveness of the use of such funds.

The DHHS OIG has also received increased funding under the DRA. It received $25 million per fiscal year, from 2006 to 2010, in connection with combating fraud, waste, and abuse in the Medicaid program. The DHHS OIG also must make an annual report to Congress as to its use of this funding and the effectiveness of its efforts.

Further, the DRA provides, in Section 6035, for increased funding for the Medicare-Medicaid Data Match Program.
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Endnotes

1. S. 1932 (Feb. 8, 2006). Note that due to a clerical error, the President signed the wrong version of the applicable DRA bill. There is a pending lawsuit challenging the validity of the DRA. Note that the signed version had the exact provisions discussed here as the bill passed by Congress.

2. Medicaid is a healthcare benefit program jointly financed by the states and the federal government. Medicaid is administered directly by the states under State Plans. Within broad federal guidelines, each state program establishes its own eligibility standards; determines the type, amount, duration, and scope of covered services; and sets payment rates. The federal government matches state Medicaid spending for medical assistance according to a formula based on each state’s per capita income. In fiscal year 2004, the federal contribution ranged from 50 to 76 cents for every state dollar spent on medical assistance. The federal match rate for administrative costs is generally 50%. See Medicaid Fraud and Abuse: CMS’s Commitment to Helping States Safeguard Program Dollars is Limited, GAO-05-857T, June 28, 2005, available at http://www.gao.gov/new.items/d05857t.pdf. The fifty-six separately administered Medicaid programs include one for
Re: Deficit Reduction Act of 2005 Imposes Compliance Program Requirements On All Entities Receiving At Least $5 Million in Medicaid Payments

Dear Clients and Friends:

If you or your facility receive $5 million or more in Medicaid payments annually, the government has put you on notice that you must have a compliance program in place if you want to continue receiving Medicaid payments beginning in 2007. The Deficit Reduction Act of 2005 ("DRA"), which was signed into law on February 8, 2006, contains a little-known provision that imposes mandatory compliance obligations on any entity that receives or makes annual Medicaid payments of at least $5 million under a state Medicaid plan. Specifically, the DRA requires, as a condition of payment, that all such entities have the following in place as of January 1, 2007:

(1) written policies and procedures for all employees (including management), contractors and agents that provide a detailed discussion of the federal False Claims Act, federal administrative remedies for false claims and statements, any state laws pertaining to civil or criminal penalties for false claims and statements and whistleblower protections under such laws, and the role of these laws in preventing and detecting fraud, waste and abuse in federal health care programs;

(2) written policies and procedures for all employees detailing the entity’s methods for detecting and preventing fraud, waste and abuse; and
(3) A section in the entity’s employee handbook that (a) provides a specific discussion of the laws described above, (b) highlights the right of employees to be protected as whistleblowers, and (c) summarizes the entity's policies and procedures for detecting and preventing fraud, waste and abuse.
Learning Questions

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1. What is druggist liability insurance coverage?

2. What risks are involved in the use of a Claims Made Malpractice policy?

3. What is the importance of assessing your pharmacy and pharmacists exposure against natural disasters occurring?

4. What is the importance in immediate notification to your insurance carrier as soon as you learn of the possibility of a claim being brought against you as a pharmacist or your pharmacy?

5. What financial exposure exists for those pharmacists owners that operate a pharmacy under the proprietor structure instead of a corporate or Limited Liability Company (LLC) structure when it comes to potential litigation?
Learning Answers

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Answers:
1. The policy which is now referred to as Pharmacy Malpractice is also known as Druggist Liability which covers pharmacists and or pharmacies against litigation against dispensing problems, errors or alleged errors in the professional dispensing role as a pharmacist or pharmacy.

2. The risks of having a lawsuit under a Claims Made policy years after the actual policy has lapsed and the alleged dispensing error took place.

3. Some pharmacists and pharmacies have no insurance protection against hurricane, floods, and other natural disasters, and some do not have malpractice insurance leaving their professional livelihood exposed to financial ruin in the event of a natural disaster or a claim being presented.

4. Many insurance companies have strict notification procedures which failure to follow results in the insurer refusing coverage even when the policy has such protection included.

5. Unless you protect all of your personal assets against judgment, by legally giving them to a spouse or other loved one, (rendering you judgment proof) if you are in a proprietor business structure, all of your personal assets are up for collection by a judgment creditor.