Physician's Guide to Trusts in California

In California, physicians have many options for meeting their professional liability needs, but you should be aware that not all organizations offering coverage are true insurance companies.

One such option is a medical liability trust. As you know, the lure of a trust is lower rates. At first glance, these rates may make a trust appear attractive, but there are many aspects of a trust that may ultimately cause you severe financial hardship.

Unlimited Liability for Trust Members

Individual trust members share unlimited liability. In order to maintain coverage, you must agree to pay your share of any and all losses and expenses incurred by the trust. If the trust fails, you are not only legally liable for your own losses, but you are also liable for the losses of all other doctors belonging to the trust. *Even if you never report a claim to the trust, you could be responsible for the claims of all other former members, and your personal and professional assets are subject to liquidation in order to satisfy the trust's unpaid claims.*

Hotel California Effect

You can lose your initial trust contribution if you do not stay with the trust until the date that it is paid in full. What happens when you report a claim? Under a trust agreement, you could be assessed a significant surcharge that results in much higher premiums. If you then want to leave the trust, you will continue to be personally liable for your open claims, including both indemnity and expenses. In essence, you are required to remain with the trust until the claim is resolved, unless you agree to remain assessable for many years following your departure or purchase expensive tail coverage. *Critics cite this "Hotel California effect"—where you can check in, but you can never leave—as one example of the potential financial risks inherent in a trust.*

Financial Reporting Implications

Trusts often carry substantial unfunded liabilities that ultimately become the responsibility of each member. *Therefore, membership in a trust may also impact your personal finances.* You are required to report a contingent liability on your personal financial statements under generally accepted accounting principles. Additionally, you may be required to disclose the nature of your trust membership on credit applications (e.g., mortgages) since you would be pledging personal assets to meet the obligations of the trust. To illustrate an example of this strong link between a trust's financial health and that of its members' finances, A.M. Best Company rates trusts based on the solvency of the trust members.

> Because trusts are not regulated by the California Department of Insurance, they can charge whatever they want, whenever they want. Contrary to an insurance policy with an annual premium, members of a trust may be required to pay additional assessments throughout the year if losses are greater than estimated.

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Potential for Price Volatility

As a member of a trust, you will be charged an annual assessment, which is based on projected losses and expenses for the upcoming year and calculated by specialty. So, poor performance within a high-risk specialty such as neurosurgery can result in large increases in assessments from one year to the next. *But because trusts are not regulated by the California Department of Insurance, they can charge whatever they want, whenever they want. Contrary to an insurance policy with an annual premium, members of a trust may be required to pay additional assessments throughout the year if losses are greater than estimated.*

> In today's turbulent health care environment, one thing you don't need is the additional burden of worrying about your medical liability coverage.

No Oversight by Insurance Regulators or Access to the State's Insurance Guarantee Fund

If you purchase a medical professional liability policy, you are required to pay only the annual premium, regardless of the losses incurred by the insurer. You cannot be assessed any additional premium. You also have the added assurance of the state's insurance guarantee fund, a fund that pays claims obligations in the unlikely event that the insurer becomes insolvent.

Conclusion

Prior to purchasing coverage with a trust, please consider the following:

1. Unlimited liability for members
2. The Hotel California effect
3. Financial reporting implications
4. Assessments
5. Lack of oversight by insurance regulators

We also encourage you to consult with an attorney regarding the potential liabilities associated with the trust. Be sure that the trust responds to your or your attorney's questions in writing.

About The Doctors Company

Founded by doctors for doctors in 1976, The Doctors Company is relentlessly committed to advancing, protecting, and rewarding the practice of good medicine. The Doctors Company is the largest national insurer of physician and surgeon medical liability with nearly 55,000 member physicians. It is the only national medical liability insurer that gives its doctors a career reward for providing outstanding patient care through its one-of-a-kind Tribute® Plan. Introduced in 2007, the Tribute Plan has already awarded over $2 million to retiring member physicians.

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