

Outsourcing?

Give Risk Management a Second Thought

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The strategy of outsourcing has become commonplace for many businesses, especially those in the healthcare industry. As companies search for the highest level of expertise for a particular function, more are finding it economical to look outside for the best resources. From a risk management perspective, this has also been viewed as a way to transfer risk that a company does not want to or cannot manage internally.

Who are we talking about?

Outsourcing can be viewed from two perspectives: from the party that seeks to outsource a particular function and from the party that actually provides outsourced services. Both parties have the potential for exposure to financial loss. This article will address the insurance and risk management concerns unique to each.

Are you transferring a risk or increasing your liability?

Outsourcing assumes that a risk has been partially transferred and that the third party will cover any mistakes and resulting financial loss incurred as a result. For a variety of reasons, the party you have partnered with could leave you more exposed than you thought possible. Therefore, you should develop a

process to identify, measure and control these exposures from outsourcing. A system to evaluate exposures should include checklists developed through a due diligence process and utilization of a well organized team of advisors. Healthcare organizations typically outsource many services.

Those providing outsourcing services (see the list below) must also have the same process in place to mitigate their risks. While most individuals rely primarily on insurance for protection, this is not always the most comprehensive or effective way to transfer risks. Other solutions are addressed later in this article.

When proof of coverage isn't enough

Why isn't it sufficient to require proof of errors and omissions or liability insurance when hiring individuals or businesses for outsourcing? The simple answer is that the insurance coverage of the professionals you are working with *will not* cover all of the problems that may occur. For example, physicians carry medical professional liability policies designed to handle many medical practice exposures, including injury to patients. This coverage and the risk

• Legal, accounting and risk management	• Financial consulting
• Advertising and marketing	• Retirement plan design
• Information technology consulting	• Property management
• Website hosting and E-Commerce	• Staff leasing
• Regulatory compliance	• Janitorial services
• Training and recruiting	• Security services
• Grant writing	• Food services
• Event planning	• Transportation of staff or patients
• Interior, architectural and construction design	• Safety consulting
• Management consulting	• Technical writing
• Medical billing	• All equipment and property repair/installation
• Relocation of business or staffing	• Medical products consulting/installation

management practices surrounding it have evolved over decades. As a result, coverage is often customized to address the types of procedures the practitioner is licensed to do by the state or other regulatory body. This does *not* mean that every action a physician takes is necessarily covered by a typical policy. Some activities not automatically covered by medical professional liability policies may include the following:

- Moonlighting
- Providing locum tenens coverage (when a physician temporarily fills in for a colleague)
- Non-FDA-approved procedures
- Expert testimony other than for your own patients
- Participation on selected hospital committees
- Business consulting
- Certain procedures performed at a medical spa

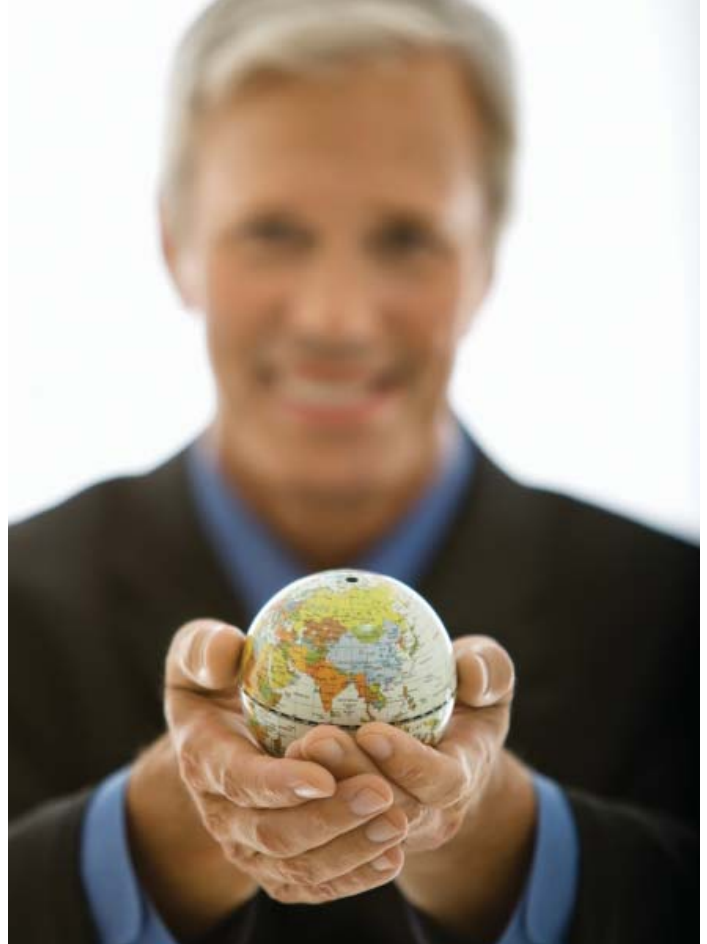
Some organizations seeking to outsource may believe the outsourced provider's commercial general liability coverage is the solution. You should be aware that general liability insurance, whether personal or for a business, usually contains strong exclusions for "professional services." Coverage must either be endorsed back for an additional premium or purchased separately, both of which have the potential to completely miss the exposures to loss outlined in a service agreement. Some business consulting may simply be uninsurable or not cost effective to transfer.

Certain policies, collectively known as non-standard market policies, have additional exclusions and limitations that are important to scrutinize. These issues mean that it is increasingly more important to have a due diligence process in place for selecting outsourcing partners.

For those performing outsourced work, it is crucial to remember that *no professional liability policy will cover everything that you do. Depending on the insurance company you choose, there can be significant differences in coverages offered.* Therefore, the same principle applies, that the party performing the work must follow a set process to mitigate its risks.

What about the rest of us?

Professionals in other industries must often take a more customized approach. Some professionals work under accepted standards and are licensed by the government or other regulatory bodies. While these entities can designate a standard of conduct, it is often minimal. This can mean that professional liability insurance may not be required to conduct business or that the insurance purchased is not enough coverage for the work being performed.



What strategy should be used if you decide to transfer risk to an insurance company? How much insurance is enough? Is the risk you are attempting to transfer covered by the typical "off-the-shelf" policies purchased by professionals in your industry? Do you even need coverage? To ensure that your exposures are actually covered, you may have to conduct some research on products available in the marketplace. If you are unable to find appropriate coverage, a custom designed professional liability policy may be necessary.

Association Insurance Products

Many professionals providing outsourced services have the option to purchase coverage from an association plan. An association can be a great resource during the identification and measurement of risk phases for the due diligence process. However, you should consider that an association may endorse a particular product in return for a marketing fee. This may not necessarily be the best option for all professionals.

Financial incentive can also drive associations to advise members to buy higher limits of coverage or additional coverage that is simply not necessary. For example, many associations advise individual members to buy coverage that may already be provided by an employer on a group basis. More is not necessarily better, especially when frivolous lawsuits are often filed with the hope that several insurance policies will respond.

Unfortunately, there are professionals who choose a solution from the opposite end of the spectrum—carrying minimal or

no coverage. The thought is that by not carrying insurance coverage, the professional will somehow avoid being targeted after a loss occurs. In reality, most businesses who outsource exposure to a third party expect some sort of catastrophic coverage or other financial responsibility as consideration for the fees paid.

Is insurance the only solution?

To manage this type of risk, a good first step for parties on both sides of the outsourcing equation involves the development of sound business practices that minimize, disclose or transfer your exposures to loss. During the underwriting process, an insurance company typically asks what type of risk control procedures are in place. Companies are happy to provide premium credits if there is a defined strategy to minimize exposure to claims.

Some businesses elevate risk control procedures to a level from which they simply don't need insurance and the dollars previously spent for insurance are focused on prevention. At the highest evolution, some companies set up an owned insurance company or captive. Whatever the alternative, you must perform similar due diligence.

Getting a handle on loss

As the healthcare industry seeks to outsource more business to third parties, the exposures and evolution of risk management options will become more complex. For those parties performing outsourced services, remember that if you present yourself as an expert on a topic or service you perform, it is assumed that you have developed risk control procedures to protect your customers from loss. Whether this is addressed in a consulting contract or not, it is an assumed liability and one for which you must have a higher standard of care. Even the description of your services presented in your literature and/or on your website can be used against you later.

Following are just a few examples of the types of loss that can occur during the outsourcing process:

- Bad advice causes a delay in a new venture. Loss of revenue is realized each day that the planned business is not open after an agreed-to deadline.
- An outsourced transaction is not carried out. As a result, there is a loss of revenue, a fine or a penalty.
- Your advice causes loss to a third party. Traditional general liability coverage excludes this, as it is considered to be "professional services."
- An organization experiences loss of reputation, intellectual property or other damage that is difficult to quantify.

- You simply fail to perform a task. An individual suffers a loss as a consequence of this inaction.
- A contract for the services in question does not address how certain losses will be handled, causing the service contract or litigation to decide who will pay.

The potential for claims is not the only consideration one should take into account when developing a due diligence process. The following list includes items that can affect liability exposure for parties outsourcing and for those performing outsourced work:

- Financial stability of the insurance company or self-insurance arrangement
- Claims-made versus occurrence forms of coverage
- Definition of professional services
- Deductibles/retentions of coverage
- Disclosure of self-insured exposures
- Contractual review of service agreement from a risk management perspective
- Reputational risk of business relationship
- Tort reform protections available in some states
- Litigation trends of certain states
- Process and definition of handling a loss
- Protection of confidential information during and after a contract is completed

Risk Manager or Insurance Salesman?

If you decide to transfer your risk to an insurance company, be aware that different insurance professionals may take different approaches to policy comparison and design. You could be in for a few surprises if you make insurance decisions based solely on pricing. Remember—you get what you pay for. Does your advisor's process minimize the likelihood you will make mistakes in the way you conduct risk management at your place of business? Have you evaluated your insurance professional in the same manner?

Before you decide whether or not to purchase insurance to cover your risk, be sure you have the best advice possible. If the only solution offered is to buy insurance, you might want to consider looking into other options. The industry teams at SilverStone Group can help you develop a due diligence process that should be a vital part of every business decision you make. We can help you ask the right questions and, ultimately, lead you to coverage solutions that will minimize your professional services exposures.