

MEMORANDUM

To: Ohio Medical Providers

From: Ann Womer Benjamin,
Director of the Ohio Department of Insurance

Date: November 14, 2003

Re: Medical Malpractice Coverage Offered by Captive Insurers

This memorandum is to advise medical providers purchasing coverage from “captive” insurance companies of the authority of the Ohio Department of Insurance with respect to captive insurers and the Department’s concerns regarding provider reliance on the captive market for malpractice coverage. While the Department appreciates the current hardship faced by medical providers from rising medical malpractice rates, the Department is concerned that many of you are not fully aware of the risk involved in purchasing coverage from a captive insurer.

The use of a captive insurer is a way in which companies or individuals may self-insure certain risks. Companies and individuals that form or join captives rely on their own resources to pay claims, rather than on licensed insurance companies to pay claims. Captive insurers may be formed by associations, such as trade or industry groups, to self-insure the risks of their members. Captives may be organized “offshore,” i.e. in another country, making them remote and less likely to be accountable to Ohio insureds and claimants.

Captive insurers generally are not subject to Ohio law or regulated by the Department. Consequently, many of the protections that apply to state regulated insurance coverage do not apply to coverage sold by captive insurers. As a result, the Department suggests that you consider the following before purchasing insurance from a captive insurer:

1. **Captives may not be regulated by the Department.** Therefore, medical providers who purchase coverage from a captive may not be protected by some of the laws that apply to state regulated coverage, such as guaranty fund protection, rate review, and financial solvency standards.
2. **Captives are not subject to the solvency requirements of Ohio law.** Most Ohio insurers that provide medical malpractice coverage are



required to have a minimum capital and surplus of \$5 million or more and must comply with Risk Based Capital solvency standards, which are intended to ensure that an insurer's assets are sufficient to pay future claims. Captives, however, may be thinly capitalized. One or more bad years of claims experience could render the captive insolvent, meaning that claims against you will not be paid by the captive. Coverage lost due to the insolvency of a captive could place your personal assets at risk.

3. **Captives are not covered by the Ohio Insurance Guaranty Association ("OIGA").** If a captive becomes insolvent, no guaranty fund protection applies and your personal assets are placed at risk. Typically, guaranty fund protection applies to medical malpractice coverage offered by Ohio licensed insurance companies.
4. **Hospitals may not accept coverage.** In credentialing physicians, some hospitals may not accept medical malpractice coverage provided by a captive since customary financial solvency standards may be lacking. A medical provider should check with his or her hospital before purchasing such coverage.
5. **Risk Retention Group Captives.** Some captives are established as Risk Retention Groups (RRGs), and have some minimal reporting requirements under Ohio law. If a captive is not established as an RRG, generally no Ohio reporting requirements exist.

Although certain types of captives may provide more affordable coverage, the Department again cautions that captive insurers may be a risky coverage option. This memorandum is intended to highlight issues you should consider as you evaluate insurance options and recognizes that some captives may be well organized and adequately capitalized.

AWB/da.