

# ADMINISTRATIVE PROCEEDING DEFENSE COVERAGE FOR HOSPITALS AND HEALTH CARE FACILITIES



You know that your liability coverage with MMIC protects you against malpractice claims by patients. But are you aware that you may also have coverage to pay for the defense against administrative actions brought by the government or a third-party payer? And are you aware that, if you qualify, this coverage is provided by MMIC without additional charge?

The Administrative Proceeding Defense Coverage endorsement (APDC) pays legal costs incurred in defending against investigations or other actions alleging that you have:

- Claimed reimbursement in violation of the law; or
- Violated EMTALA, the Emergency Medical Transfer and Active Labor Act; or
- Violated the privacy or security provisions of HIPAA, the Health Insurance Portability and Accountability Act.

The endorsement covers actions brought by “administrative entities.” These entities include private health insurers, Medicare, Medicaid, the Justice Department, federal Offices of Inspector General, and other federal agencies responsible for enforcing compliance with Medicare and Medicaid reimbursement rules, HIPAA and EMTALA.

Although it is sometimes loosely referred to as “fraud and abuse coverage,” the APDC endorsement actually provides much broader protection. Some of the most common APDC claims include:

- Federal or state investigations into alleged improper billing – for example, upcoding, improper bundling or ineligible provider;
- Federal inquiry into compliance with the Stark or anti-kickback rules and;
- Alleged HIPAA privacy or security violations.

The APDC does not cover actions by medical licensing boards because defense of these actions is covered by

MMIC's underlying professional liability coverage. Other exclusions, including those for intentional acts and routine audits, are explained in the policy.

In addition to the healthcare entities named on the policy, the APDC endorsement applies to all licensed employees of the facility – for example nurses, physician assistants and CRNAs.

There are two key duties of the insured under the APDC endorsement:

- First, you must contact MMIC at the first notice of an administrative action against you. This notice may be as formal as an official written document from CMS or as simple as a phone inquiry. Early notice to MMIC will allow us to engage appropriate counsel to help you through the investigative process.
- The second duty of the insured is to be represented by counsel appointed by MMIC. Make sure to contact MMIC immediately if you believe you may be the target of an administrative proceeding and need legal counsel. There is no coverage for use of attorneys not appointed by MMIC.

The APDC limits provided without additional charge are \$25,000 annual aggregate for each insured with a \$100,000 total policy limit. A \$50,000 annual aggregate limit is available for purchase with your annual renewal.

Stories about administrative actions against hospitals and facilities continue to hit the medical headlines. MMIC stands ready to protect its policyholders against the risk of onerous legal fees these proceedings may generate. For more information about the Administrative Proceeding Defense Coverage, contact MMIC General Counsel Lori Berreman at 800.328.5532.