



Resource Document – For Internal Use Only

Professional Liability Protection for Covered UW-Madison Health Care Providers and Learners

Introduction

This document provides a description of the professional liability coverage¹ provided to University of Wisconsin-Madison (“UW”) employees and agents² through the State of Wisconsin Self-Funded Liability Program. This professional liability coverage for health care providers and learners covers acts and omissions that occur while they are acting within the scope of their employment or agency.

Coverage Information

Employees and agents of UW are covered by the State of Wisconsin Self-Funded Liability Program under § 895.46 of the Wisconsin Statutes for acts or omissions that occur while they are acting within the scope of their employment or agency. **All (1) UW-employed attending physicians, (2) physician fellows in UW School of Medicine and Public Health (“ UW SMPH”) unaccredited fellowship programs, (3) Graduate Medical Education trainees in the Department of Family Medicine and Community Health, (4) UW SMPH and other UW health sciences students, and (5) nurses, pharmacists, and other health care professionals with paid UW appointments, are covered under this State of Wisconsin Self-Funded Liability Program.** In this document these individuals are referred to collectively as “Covered UW-Madison Health Care Providers and Learners.” Membership by UW-employed attending physicians in the University of Wisconsin Medical Foundation (“UWMF”) practice plan does not affect the State coverage afforded to them in any way.

Coverage is occurrence-based and effective continuously during the Covered UW-Madison Health Care Provider or Learner’s term of employment or agency with UW. Coverage is not limited to a specific site or location. Coverage applies for all acts or omissions which are in the

¹ UW provides other types of liability coverage, in addition to professional liability coverage, that are not addressed in this manual.

² The most common example of an agent covered for purposes of professional liability by the State of Wisconsin Self-Funded Liability Program is a health professions student acting in their role as a UW student during a clinical rotation or other clinical activity as part of their UW course of study.

course and scope of employment or agency whether occurring within the State of Wisconsin, outside of the State of Wisconsin, or outside of the United States. If you are not sure whether you are a Covered UW-Madison Health Care Provider or Learner, contact UW SMPH Risk Management at smph-rm@med.wisc.edu for further information.

Claim Reporting

If you receive legal papers concerning a claim related to your role as a Covered UW-Madison Health Care Provider or Learner, or if you become aware of a potential claim, contact the UW Office of Legal Affairs (“UW OLA”) at (608) 263-7400. Prompt notification is essential, as court rules set short deadlines for responding. Delays in notification could compromise the ability to defend a claim and could potentially even compromise coverage.

Insurance Verification and Credentialing Requests

For confirmation or questions regarding your insurance coverage and/or malpractice claim history, a request must be submitted to UW SMPH Risk Management by emailing smph-rm@med.wisc.edu. If you are requesting malpractice claims history information be sent to a specific organization, we will accept your email as authorization to process your request. SMPH Risk Management will acknowledge receipt of your request.

Frequently Asked Questions (FAQs)

Professional Liability Coverage FAQs

1. Who is covered by the State of Wisconsin Self-Funded Liability Program?

The State of Wisconsin Self-Funded Liability Program provides liability coverage for all Covered UW-Madison Health Care Providers and Learners acting within the scope of their employment or agency, including as part of a training program.

2. How is “scope of employment or agency” defined?

An individual’s scope of employment or agency is generally defined by their position description, appointment letter, and/or other applicable statement(s) of duties and approved professional or educational activities. For activities that are not part of your usual employment duties or educational activities, to be covered you will need written approval from your School or Department confirming that the activity is within the scope of your UW employment or agency. One example of this type of activity is a medical mission trip.

3. Does my liability coverage change if I am at a site geographically outside of Wisconsin?

No. As a Covered UW-Madison Health Care Provider or Learner your liability coverage and legal defense will always be provided by the State of Wisconsin. Questions about work duties outside of Wisconsin should be directed to UW OLA at (608) 263-7400.

4. Is there a limitation on the amount of coverage from the State of Wisconsin Self-Funded Liability Program?

No, there is no limit on the amount of coverage provided by the State of Wisconsin. Any settlement or judgment involving a Covered UW-Madison Health Care Provider or Learner will be paid in full by the State of Wisconsin.

5. I have heard that there is a “damages cap” that applies to State of Wisconsin employees and agents. What does that mean and does that apply to me?

State law caps the amount recoverable by a plaintiff against a State employee, including a Covered UW-Madison Health Care Provider or Learner, in a civil lawsuit filed in a Wisconsin court. The amount recoverable against an individual Covered UW-Madison Health Care Provider or Learner by one claimant in a case arising under Wisconsin law is limited to \$250,000. These damage caps generally do not apply when health care is provided outside of the state of Wisconsin.

6. Where does my liability coverage come from if I am providing health care services at the Veterans Affairs (“VA”) Hospital?

It depends. Under federal law, VA health care providers and trainees are protected from personal liability from tort claims or lawsuits for medical malpractice for actions within the scope of their federal employment or agency at a VA facility. Whether you are covered by UW or by the VA during the provision health care at the VA depends on the nature of your engagement at the VA. For questions about this, contact UW OLA at (608) 263-7400. If you have liability coverage through the VA for health care services provided there, please contact a VA Medical Staff Coordinator at (608) 280-2281 with any questions.

7. What coverage exists for actions in an emergency during “off-duty” hours?

The State of Wisconsin Self-Funded Liability Program does not provide liability coverage for off-duty care, including care rendered in an emergency at the scene of an accident. Under Wisconsin’s Good Samaritan law (Wis. Stat. § 895.48(1)), those who provide emergency care in good faith at the scene of any emergency or accident are, in most cases, immune from civil liability for their acts or omissions if they are not compensated for the care. Questions concerning this immunity may be directed to UW OLA at (608) 263-7400.

8. What do I need to do if I have another job or volunteer activity at which I am providing health care services?

If you are providing health care services outside of your UW employment or training program, whether paid or unpaid, you should make other arrangements for professional liability coverage. UW will not provide liability coverage for these activities. The only exception is that UW may, in its sole discretion, extend liability coverage to UW employees for certain volunteer-like activities. (See #2.)

If you are working for another employer³, you should consult with the other employer to determine what coverage is being provided for you. If coverage is not being provided for you by that employer, you should consider making arrangements yourself for professional liability coverage for that work.

If you are providing health care services as a volunteer, you should first check to see if the entity where you volunteer provides coverage. You may also wish to consider whether you qualify for coverage under the Wisconsin Volunteer Health Care Provider Program, or under Wis. Stat. § 895.48 (related to sports). If none of these apply, you may speak to your department chair about whether UW might consider providing coverage for this activity. (See #2.) If coverage is not provided for you by the entity or otherwise available to you as outlined in this paragraph, you should consider making arrangements yourself for professional liability coverage for that volunteer activity.

9. Should I obtain my own professional liability insurance policy?

If all your health care activities are within your UW employment or agency, then private insurance may not provide you with any additional benefit. In fact, additional professional liability coverage may interfere with your State liability coverage.

If you are involved in activities outside of your employment or agency, you will need to assess the scope of these activities to determine whether you feel additional insurance is needed. (See #8.) Coverage may be available through the entity to which you are providing the activity.

10. What is the difference between “claims-made” and “occurrence-based” liability coverage? And which type do I have as a Covered UW-Madison Health Care Provider or Learner?

“Occurrence-based” liability coverage is coverage that is purchased for a specific time period and covers all claims arising out of incidents that occur during that policy period, regardless of when the claim is reported.

“Claims-made” liability coverage is coverage that is purchased for a specific time period that covers claims that are made during that policy period, arising from incidents that occurred either on or after a date specified in the policy called the “retroactive date.”

The State of Wisconsin Self-Funded Liability Protection provides “occurrence-based” liability coverage. This means that Covered UW-Madison Health Care Providers and Learners who leave UW are covered for acts or omissions that occurred during and within the scope of their UW employment or agency, regardless of when the claim is made. Tail coverage for the UW employment or agency period is not needed when leaving UW.

11. How can I obtain confirmation of coverage?

³ Any paid clinical employment outside the scope of your UW appointment must be approved in advance by your Department Chair, the Dean of SMPH, and UWMF leadership.

If you are a covered UW-Madison Health Care Provider and Learner and need a Certificate of Insurance (COI) for licensing, credentialing, etc., please email UW-Madison SMPH Risk Management at smph-rm@med.wisc.edu. If you are requesting a COI to be sent to a specific organization, we will accept your email as authorization to process your request. SMPH RM will acknowledge receipt of your request.

Claims Management FAQs

12. If I am served with legal papers or otherwise become aware of a claim, whom should I notify?

It is essential that if you become aware of any claim or potential claim, you should immediately contact UW OLA at (608) 263-7400, and deliver the document to UW OLA, 361 Bascom Hall, 500 Lincoln Drive, Madison, WI 53706, or fax (608) 263-4725.

Most legal papers require a prompt response to protect your rights and the rights of UW. In some cases, failure to take proper action before a deadline could have significant negative implications – including a court entering a default judgment.

13. What is a “Notice of Claim?”

A Notice of Claim is not a lawsuit. Prior to May 27, 2010, filing a Notice of Claim was a procedural step that a person seeking to sue the State or any State employee was required to take before filing a lawsuit. The Notice had to be filed within 180 days of the event that might serve as the basis for a potential lawsuit. The majority of these notices were not followed by lawsuits.

For any potential medical malpractice claim arising on or after May 27, 2010, a Notice of Claim is not required. For any alleged act or omission that occurred prior to that date, a Notice of Claim was still required within 180 days of the event that might serve as the basis for a claim.

While no longer required for medical malpractice claims, some attorneys and patients do still file a Notice of Claim. If you receive a Notice of Claim, promptly notify UW OLA at (608) 263-7400.

14. What is a “Request for Mediation?”

You may receive a document titled “Request for Medical Mediation.” This is one way that a medical malpractice action may be initiated in Wisconsin related to some types of malpractice claims. UW employees should promptly notify UW OLA (608) 263-7400 if they receive a Medical Mediation Panel request.

15. Who investigates patient complaints or other potential claims?

The UW SMPH Risk Manager, UW OLA and/or the Wisconsin Department of Justice, Office of the Attorney General (“DOJ”) investigate claims involving Covered UW-Madison

Health Care Providers and Learners. Many claims name UWHCA, UW MF, and UW personnel. In such cases, the UW SMPH Risk Manager, UW OLA, and/or the DOJ investigate the aspects of the claim that involve Covered UW-Madison Health Care Providers and Learners in collaboration with UWHCA Risk Management and UWHCA Legal staff. Covered UW-Madison Health Care Providers or Learners who are contacted about a claim by anyone other than the UW SMPH Risk Manager, UW OLA, or DOJ, should contact UW SMPH Risk Management (608) 263-2914 or UW OLA (608) 263-7400.

16. What is the statute of limitations for a malpractice claim?

In Wisconsin, an adult patient typically has three years from the date of an alleged injury, or one year from the date on which they discovered or reasonably should have discovered the injury (not to exceed five years from the date of the actual injury), whichever is later, to file a lawsuit. In Wisconsin, a minor typically has three years from the date of the alleged injury, or until the age of 10, whichever is later, to file a lawsuit for medical malpractice. There are some nuances related to the statute of limitations in a medical malpractice claim that may extend the statute of limitations. Consult UW OLA (608) 263-7400 with questions about the statute of limitations. You should notify UW OLA immediately of any claim even if you believe the statute of limitations has run.

Requests to Confer with Outside Attorneys

17. An attorney has asked me for a phone call or a meeting to discuss my treatment of a patient. What should I do?

Unless you have been served with a subpoena or a court order, it is up to you whether you wish to have this type of call or meeting.

In deciding whether to take a meeting you may consider whether you or a UW colleague is the subject of a potential claim by the patient, or whether your treatment of the patient is related to, for example, an auto accident or work injury.

While in many cases you may not wish to take this kind of meeting, it may be advisable to have limited contact with the attorney if you are likely to be subpoenaed to testify. This is because you may be able to work with the attorney to find a time that is mutually agreeable. If you do not engage with the attorney regarding scheduling, the attorney can subpoena you and you will be legally compelled to appear at the date, time, and location indicated on the subpoena regardless of whether it interferes with patient care or personal obligations. UW SMPH Risk Management can assist with these scheduling discussions.

If you agree to communicate with an attorney, you must have an authorization signed by the patient or the patient's legal decision-maker. This is required under the Health Insurance Portability and Accountability Act (HIPAA) and Wisconsin law. Even if you have an authorization, we generally advise that you not bring medical records with you to any such meeting or access the electronic medical record in the presence of an outside attorney. An attorney wishing to meet with you should already have the medical records relevant to their questions and can provide you copies, if needed.

Before meeting with an attorney who represents your patient, you should also understand the “Alt Privilege.” On one hand you can be compelled, through a properly issued and served subpoena, to testify to the facts of the care you had provided and your medical decision-making. However under Wisconsin law, you can decline to offer expert opinions, including new medical opinions (such as whether another provider met the standard of care). If, however, in the course of meeting with an attorney you voluntarily offer expert opinions – as opposed to sharing only objective facts – you may be deemed to have waived the Alt Privilege and can potentially be compelled to offer expert opinions in the same case in the future.

If you have any questions about attorney requests for a meeting, please contact UW SMPH Risk Management at (608) 263-2914.

18. What should I do if I receive a subpoena to appear at a deposition or trial?

If you receive a subpoena requiring you to appear and give testimony at a deposition or trial, you should contact UW OLA at (608) 263-7400 or UW SMPH Risk Management at (608) 263-2914 immediately. Sometimes an attorney may mail, email or fax you a subpoena and ask you to sign and return an “acknowledgment of service” (or similarly titled) document. Signing and returning an “acknowledgment of service” document may result in the waiver of any ability to claim the subpoena was not properly issued or served. We do not recommend signing an “acknowledgment of service” document, particularly if you have any concerns about service, unless UW OLA directs you to sign.

If the subpoena was not properly served and you do not wish to testify, we will notify the individual who attempted to serve the subpoena. They may or may not attempt to properly serve the subpoena.

If you have been properly served, you are required to appear at the date, time, and place listed on the subpoena to give testimony. Failure to appear can result in a contempt citation and/or a fine.

Even if you have been subpoenaed, you also need an authorization or a court order (from a judge) to disclose patient information at a deposition or trial. You should not bring paper records with you, nor should you bring a computer or other device for accessing the electronic health record. The attorney who subpoenaed you should provide any necessary records.

If a subpoena requires that you both appear and also produce records, see #19 below for instructions about how to handle subpoenas that require the production of records or tangible items.

You should also understand the “Alt Privilege.” Under Wisconsin law, an individual with relevant expertise (e.g., a health care provider) may decline to provide expert opinions. If, however, in the course of your testimony you offer expert opinions – as opposed to sharing only objective facts – you may be deemed to have waived the Alt Privilege and can be compelled to offer expert opinions in the same case in the future.

19. What should I do if I receive a subpoena to produce medical records, other records, or other tangible items?

Covered UW-Madison Health Care Providers and Learners are not authorized to release medical records. Any time you receive a subpoena for records you should first contact UW SMPH Risk Management at (608) 263-2914.

Subpoenas requesting only UW Health medical records will be directed to the Release of Information Section of University of Wisconsin Hospitals and Clinics Authority (“UWHCA”) Health Information Management, 8501 Excelsior Drive, Room 101, Madison, WI 53717. If there is a short time limit for responding to the subpoena, it can be faxed to (608) 262-6663, Attention: Release of Information Section.

20. If there is a lawsuit, who will provide legal defense?

Legal defense for Covered UW Madison Health Care Providers or Learners is always provided by the State of Wisconsin. In most every case, this defense will be provided by an Assistant Attorney General from the DOJ with support from UW OLA. This includes representation in pre-trial discovery, mediation, settlement negotiations, and at trial.

21. State law requires a person named in a claim to cooperate in the defense of the claim, and non-cooperation is grounds for loss of insurance coverage. What does this mean?

You must notify UW OLA at (608) 263-7400 promptly of any legal papers that you receive related to your UW employment or agency. If you fail to provide legal papers promptly or refuse to cooperate, you could be denied coverage.

You also have an obligation to be available to the attorneys and support staff providing your defense. You should follow instructions of the defense attorneys concerning the defense of the case. If you are unavailable and not responding requests from your legal team, the Attorney General may withdraw from your case, and then you would be responsible for hiring your own lawyer and you would be financially responsible for any settlement or judgment.

22. How are settlements and judgments handled?

Before a case is settled, attorneys from OLA and DOJ will consult with Covered UW-Madison Health Care Provider(s) or Learner(s) on whose behalf the settlement will be made. While the preferences of the affected individual(s) are considered, the Attorney General’s Office/DOJ has the right to settle cases over their objection.

After a settlement or award of judgment, the involved will be notified. UW is legally required to report settlements or judgments on behalf of physicians and some other health care professionals to the National Practitioner Data Bank and to state licensing authorities. UWHCA is also required by contract to report settlements and judgments to some third-party payers or managed care organizations.

23. What is the Injured Patient and Families Compensation Fund (“IPFCF”)? And, how, as a UW-Madison Health Care Provider, am I expected to interact with the IPFCF? (Note: UW-Madison Health Care Learners have no legal obligation to interact with the IPFCF.)

The IPFCF is a State-run fund that provides excess medical malpractice coverage to some Wisconsin-based health care providers to ensure that funds are available to compensate injured patients in the event of a medical malpractice event.

Covered UW-Madison Health Care Providers are not covered by the IPFCF.

While Covered UW-Madison Health Care Providers are not covered by the IPFCF there are important ways in which you are expected to interact with the IPFCF. These actions require your prompt attention. Failure to respond promptly to notices from the IPFCF can imperil your medical license.

For example, upon hire and on occasion thereafter, you will receive a form from the IPFCF asking you to confirm the type of liability coverage you have. From the first through the last date of any UW employment you should select “I am employed by the state, county, or municipality” when completing the form.

If you have any questions about completing applicable IPFCF paperwork please contact UW SMPH Risk Management at smph-rm@med.wisc.edu.