



Risk Management Strategies for Thriving in the Transforming Healthcare Landscape | *White Paper*

INTRODUCTION

Historically, medical professional liability insurance has been a cyclical industry. Currently, the industry is said to be moving on from a period of peak profitability to a period of price competition and a lower return on capital. Recent analysis of the industry suggests the exact direction the next underwriting cycle takes will be partially driven by the outcomes of national healthcare reform. The potential effects include but are not limited to:

- An increased use of electronic medical records (EMRs)¹
- Doctor reimbursements made based on quality and efficiency of service²
 - A key provision of the Affordable Care Act is the development of the Medicare Shared Savings Program, which will offer providers reimbursement incentives if they meet certain quality and efficiency benchmarks, including reducing redundant services, improving productivity, minimizing paperwork and improving cost efficiency.³
- There will be up to 32 million previously uninsured people seeking care⁴
- An increase in care provided by nurse practitioners, due to regional physician shortages⁴
- A shift in the delivery of healthcare, with Accountable Care Organizations (ACOs) and clinics becoming more prominent⁵
 - In an analysis published by the Robert Wood Johnson Foundation, ACOs are defined as "... a local entity and a related set of providers, including at least primary care physicians, specialists and hospitals, that can be held accountable for the cost and quality of care delivered to a defined subset of traditional Medicare program beneficiaries or other defined populations, such as commercial health plan subscribers."⁶
- Increased E-discovery as patients will have access to their own medical records and lawyers may ask and look for more information⁷
- Reduced quality of care, even while the expected standard of care is estimated to remain high, due to the increase in complex care provided by nurse practitioners in addition to physicians being monetarily incentivized to provide more cost-effective treatment²
- An increase in the healthcare margin between affluent and more economically challenged areas as regions with weaker local economies, higher physician shortages and a larger (than in more affluent areas) increase in the newly insured population work to meet reform goals⁸



The nation's method of delivering healthcare appears to be positioned for change and medical professional liability insurers might want to consider proactively shifting their focus, resources and thinking based on these potential changes, in order to remain ahead of the curve.

KEY THEMES

In order to not only succeed but thrive in this new healthcare climate, medical professional liability insurance companies should focus on leveraging core competencies, understanding emerging risks and opportunities and developing new capabilities.

Medical professional liability insurance companies should emphasize being well-informed, proactive and forward-thinking; it is important to embrace the concept of reinvention.

THE FUTURE OF MEDICAL PROFESSIONAL LIABILITY INSURANCE

The next medical professional liability insurance cycle is expected to show an increase in both competition and loss cost growth. As Conning Research & Consulting notes in its November 2010 study, "competition has begun already, with price-cutting, acquisitions, new entrants and continued growth of self-insured vehicles."⁴ The increase in loss cost growth is expected to develop slowly, but researchers believe the ingredients for this development are there. Additional typical characteristics of the expected upcoming soft market include a potential increase in claims cost as well as deteriorating cash flow and combined ratios.⁹ Based on these related shifts in healthcare delivery and medical professional liability insurance, there are specific areas that the medical professional liability insurer should especially consider focusing on. These areas are:

- Risk management
- Claims defense
- Policy pricing
- Company expansion
- Chosen markets

The "Strategies and Recommended Practices" section of this paper delves into these areas, particularly risk management, and how the medical professional liability insurer could consider expending the most energy in those areas.



STRATEGIES AND RECOMMENDED PRACTICES

Risk management will continue to play an increasingly important, but shifting, role for medical professional liability insurers. The overarching tone for all subsequent risk management recommendations in this paper is for the risk manager to focus on turning potential risks into assets. By anticipating the combined suggested outcomes of healthcare reform and the next cycle of medical liability insurance, risk managers and medical professional liability insurers can place themselves ahead of the curve.

Detailed below are the impacted areas and possible outcomes of healthcare reform and how risk management can play a role in anticipating the changes taking shape and thus positively integrate and utilize these shifts to the benefit of healthcare providers, patients and the medical professional liability insurer.

Electronic Medical Records

The medical professional liability insurer can increase risk managers' value to the client by helping to make the implementation of Electronic Medical Records (EMRs) successful. The expectation for advocates of EMRs is that they will make delivery of care more efficient by limiting medical errors and lowering costs. According to Conning Research & Consulting, proponents of EMRs cite that such systems will establish a uniform standard of care; reduce errors via electronic prompting and monitoring; and simplify and reduce errors in the transfer of records to specialists and hospitals.¹ However, other studies suggest that EMRs may potentially increase liability exposure for complex claims and that the process of switching over all doctors and healthcare organizations in the U.S. to EMRs will be a timely and somewhat overwhelming process.

The medical professional liability insurer can make this process smoother by ensuring risk managers follow a few important guidelines listed below:

- Continuously promote the proper use of EMRs among mid-level care providers, such as nurse practitioners and physicians assistants. Whether this promotion is in the form of courses, readings or seminars, it is important for mid-level care providers to have a keen and consistent understanding of how these systems are to be used.
- Offer continuous training on proper use and best practices to help reduce claims exposure and medical errors.
- Note that it is particularly important for healthcare facilities' staff to be trained on EMRs in more economically-challenged, physician-shortage areas, to ensure they do not become a liability.



Mid-Level Care Providers

Recent studies suggest a shortage in physicians, particularly in primary care. This shortage combined with economic constraints, 32 million previously uninsured people⁴ and an aging population, is expected to dramatically increase the demand for complex care provided by mid-level care providers such as nurse practitioners and physician assistants. An opportunity exists for medical professional liability insurers and risk managers to take actions to monitor this expected increased exposure of mid-level care providers and assist healthcare providers in managing their exposure:

- Emphasize training in best practices among mid-level care providers and consider regularly auditing such providers. Potential audits can include background checks and expanding roles in diagnostics and acute care. This can help to contain loss exposure and assess risk.
- As mentioned above, promote the proper use of EMRs among mid-level care providers.
- Work to make mid-level care providers an ASSET rather than a RISK by promoting the importance of patient-care provider relationships (relationship-building) in an effort to reduce medical errors and lower claims. It is recommended that mid-level care providers take time to get to know the patient's medical history, understand and explain the reason for a doctor's consultation and follow up with reminders to make the patient feel valued and cared for.
- Make efforts to accurately measure the liability of the increasing role of mid-level practitioners in a variety of settings, then consider changing rates and/or policies for them to adapt to the reality that they will be performing more procedures under the planned reform. By making such changes, the medical professional liability insurer will be assisting in significantly reducing exposure.

Insureds

In addition to the EMRs and mid-level care provider guidelines that medical professional liability insurers can follow in an effort to successfully adapt to healthcare reform changes, there are a few recommendations the insurer can implement among insureds that can also help manage risk:

- Promote patient accountability and an active partnership between patients and providers in an effort to improve outcomes and reduce causes of liability claims. Patient accountability can help to manage patient expectations appropriately, thereby reducing some causes of medical liability claims and placing more responsibility on the patient.
- Incent, document and monitor patient accountability by having patients sign a document, agreeing that they understand their medical condition, treatments and the results of not following treatments.



- Recognize that it is now, more important than ever, to regularly monitor hospital quality. Utilize tracking tools that recognize underperforming hospitals, especially for areas in which doctor shortages are leading to significantly expanded roles for mid-level care providers.

Medical Professional Liability Insurers

Finally, overall as the medical professional liability insurer, there are a few additional ways to proactively adapt to healthcare reform, in the areas of policy pricing, expansion and chosen markets:

- As suggested above with mid-level care providers, update pricing models to reflect the frequency and risk of procedures, the volume of care and the type of patients receiving care. This is increasingly important as the 32 million previously uninsured people become insured.⁴
- Due to the changing manner of the delivery of healthcare services, focus not only on leveraging existing relationships, but also on looking at larger hospitals, ACO organizations and clinics as prospective insureds to expand and/or shift the premium base. As the environment in which healthcare is delivered to patients shifts, so must the medical professional liability insurer's list of prospects.
- Develop new products and services, particularly related to technology, that fit the higher-growth markets of healthcare and the changing delivery of care. ACOs and larger hospitals will benefit from different services and efficiencies more than an individual physician. Additionally, with more mid-level care providers delivering increasingly complex care, product gaps will become more evident. Proactively, rather than reactively, adjusting to these potential gaps may prevent hiccups among current insureds and appeal among prospects.

REGARDING CLAIMS

According to Conning Research & Consulting, an additional aspect of national healthcare reform to be aware of is that there will be several major drivers of increasing claims cost. Monitoring and incorporating each driver into strategic planning will be an essential part of developing and ensuring higher performing underwriting and risk management practices.

The drivers include:

1. Signs of erosion in favorable state tort reforms¹⁰

- Forty six states have passed some type of reform and studies have shown these reforms have been significant factors in reducing medical liability costs over the past 10 years.
- Evidence suggests reforms in some states are eroding, which could drive loss costs up substantially, in frequency and severity.



2. **Physician shortages, the uninsured and the role of practitioners under reform**¹⁰ (as suggested in previous points)
 - The question for the medical professional liability insurer is: Can healthcare become more cost-efficient without increasing risk to the patient?
 - It may become more difficult for healthcare providers to operate within the current expected standard of care and malpractice may therefore become easier to establish.

3. **More difficult economic conditions for hospitals**¹¹
 - As suggested in previous points, due to declining reimbursements from Medicare, Medicaid, and private insurers as delinquent or defaults from insureds increase, the traditional hospital model is deteriorating.
 - The weak economy is a factor.
 - Poor performing hospitals may become an area of increasing risk for medical professional liability insurers.

4. **New EMRs and E-Discovery**¹¹
 - As discussed in previous points, there are risks and opportunities with EMRs and research shows the potential results of EMRs to be a mixed bag.
 - If designed and used properly, EMR systems may help prevent routine errors; however, they increase the ease of access to more data than older, paper-based files. As patients have access to their own medical records, lawyers may increasingly ask for more information and develop more efficient discovery tools.
 - Claims frequency and the cost of claims will likely increase as these systems become more fully implemented.

CONCLUSION

The most important point for the medical professional liability insurer to focus on is to make efforts to gain a full understanding of how the delivery of healthcare is changing under reform and to recognize how these changes apply to its core competencies and value proposition. Perhaps the new healthcare environment will even mean a new value proposition and shifting core competencies for some insurers, but the idea is to adjust prior to these changes since they could potentially cause difficulties for insureds, patients and ultimately the insurer. Focus on drawing on known strengths, leveraging assets and expanding offerings. Ultimately, accept that reinvention may be part of the process. Finally, remember to ensure key company constituents are not only aware of the changes, but also, ideally, supportive of them so that execution of objectives can be successful. The nation's healthcare system is changing and the medical professional liability insurer that can appropriately adapt along with it may prove to be the most successful.



REFERENCES

1. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 14.
2. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 13, 107.
3. Centers for Medicare and Medicaid Services. "Affordable Care Act Update: Implementing Medicare Cost Savings." August 2, 2010. Available at <http://www.cms.gov/apps/docs/ACA-Update-Implementing-Medicare-Costs-Savings.pdf>. Accessed February 23, 2011.
4. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 7.
5. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 8.
6. K. Devers and R. Berenson. "Can Accountable Care Organizations Improve the Value of Health Care by Solving the Cost and Quality Quandaries?" October 2009. Pg. 1.
7. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 15; 106.
8. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 108-109.
9. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 19.
10. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 37.
11. Conning Research & Consulting. "Medical Professional Liability in a Changing Health Care Environment: The New Story Unfolds." November 2010. Pg. 38.



