Market Trends in Professional Liability Insurance

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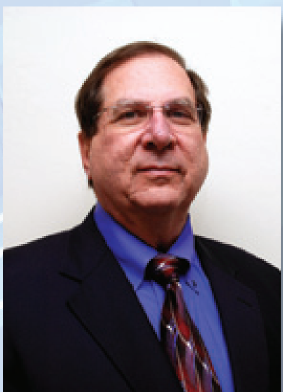
Over the last several years, physicians have enjoyed a general downward trend in the costs of professional liability insurance premiums. Those who follow the industry have no single explanation for this reduction. However, several factors may combine over the next few years that could put upward pressures on premiums. It is unlikely that any one of these could individually cause increases that would change physician practices, but combined, they have the potential of negatively impacting the current situation significantly (see Table).

First, the increasing pace of mergers and acquisitions among professional liability insurers may influence an upward trend in insurance premiums. We have witnessed several large transactions over the last year, such as The Doctors Company's (TDC's) purchase of FPIC Insurance Group, Inc., the parent of First Professionals Insurance Company, Inc. (FPIC), Anesthesiologists Professional Assurance Company (APAC), and several other smaller insurance carriers. Fewer insurers in the market can potentially result in higher premiums due to the basic economic laws of supply and demand.

According to TDC, this combination makes it the largest insurer of physicians in the country. Since one of the acquired companies provided professional liability insurance only to anesthesiologists, this acquisition could disproportionately affect the cost and availability of professional liability insurance for anesthesiologists, depending on how TDC and other insurers react to a market with fewer insurers.



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Further, without characterizing any particular transaction, the very act of acquisition by a company may put upward pressure on premiums due to circumstances beyond the reduction in the number of insurers. For example, a company paying a premium to acquire another insurer with insufficient reserves may force the purchaser to increase its own reserves to cover the newly acquired policyholders. This could be done by either reducing its surplus or by raising the premiums of its policyholders.

A second factor that may affect liability insurance premiums is the continued trend of physicians becoming employees of individual hospitals or hospital systems in which they practice. This may occur due to hospital purchases of the physician practices or hospitals directly hiring physicians as employees. There is nothing automatically good or bad about physician employment. Rather, whether these arrangements will be beneficial or detrimental to the physicians involved depends on the details of those arrangements.

New Trends That May Increase Malpractice Insurance Premiums

▪ Mergers of liability insurance companies leading to less competition.
▪ Physician employment by hospitals leading to fewer private practitioners, and smaller pool for insurance.
▪ Reimbursement of governmental third-party payers for some costs of care in plaintiff-awarded malpractice settlements or judgments.

With respect to professional liability insurance, it is unclear how large-scale physician employment will affect the availability and costs of individual physician policies. In some cases, employed physicians may be covered under the blanket insurance policies of the hospital system employing them. Will employed physicians have the same policy limits as the hospital in which they practice? Or will the hospital have deep-pocket coverage of $10-25 million with physicians covered by separate policies with the more traditional $1-3 million limits?

While it may be prudent for hospitals to have more extensive coverage, higher limits could make employed physicians targets of lawsuits even if they might be less culpable for a particular outcome than other privately insured physicians with lower limits. If employed physicians have separate policies with lower limits, might hospitals try to shift blame for bad outcomes to physicians in an attempt to reduce potential plaintiff settlements or judgments?

Some employed physicians report that the hospital systems they work for routinely settle cases on behalf of the hospital itself, removing physician defendants from the suit. The advantages of these practices for physicians are obvious, but most of these reports seem to come from physicians working with systems that have employed physicians for many years, even decades. It remains to be seen how systems new to these arrangements will approach these situations over the next several years.

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Before entering into employment relationships with hospital systems, anesthesiologists should fully understand the insurance coverage that comes with those arrangements. They should determine who has final decision-making authority in the event of a lawsuit involving both the hospital and physician. Who makes settlement decisions for the physician-defendant – the physician or the hospital? Are defenses mounted jointly, or does separate counsel represent the physician? If defended separately, are the defense costs included in the policy limits or in addition to those limits? Before entering into employment arrangements, anesthesiologists should fully understand the answers to the same questions they would ask if purchasing an individual policy, even if the insurance issues are secondary to the larger questions of salary, benefits, working hours, overhead expenses, etc.

Increasing physician employment might also have secondary effects on the insurance market for anesthesiologists remaining in private practice. As the available pool of individual insurance purchasers decreases, economic pressures could result in increased pricing for those remaining in that group of policyholders. Since insurers risk-adjust by specialty, a smaller number of insured anesthesiologists means that a few outlier cases could result in disproportionately higher premiums for the remaining insured physicians.

A third factor that could push premiums upward is the requirement that plaintiff-awarded malpractice settlements or judgments must reimburse government third-party payers, such as Medicare and Medicaid, some of the costs of their medical care. If the insurance payments to plaintiffs do not explicitly provide for government repayments, the insurer may be liable for those repayments over and above the settlement costs. Including these costs in settlement discussions will likely result in increased costs to settle cases. Either way, premiums are likely to increase as the costs of these requirements are absorbed by the system.

As noted at the beginning of this article, these and other factors might result in higher professional liability insurance premiums over the next several years. This is not a certainty, however, as other market factors, such as fewer lawsuits filed, may still push premiums lower. What is clear is that this is a dynamic market that should be monitored closely over the next several years to not only determine the market trends, but the effects of changes in other aspects of the health care industry.