Citation

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Full Text

Choice of malpractice insurance limits is a decision many anesthesiologists make each year. This is an area of insurance coverage where there are no hard and fast rules of what is right and what is wrong. Malpractice insurance limits are typically quoted as two numbers together such as $1 million/$3 million. For this limit, the insurer would pay up to $1 million for each individual claim and up to $3 million in any given insurance year for multiple claims against the insured. Higher limits such as $5 million/$9 million would pay larger claims and provide coverage for more than one claim of high severity.

The ASA Committee on Professional Liability recently surveyed malpractice insurance companies providing coverage to anesthesiologists (see article on page 5). This survey demonstrated that $1 million/$3 million coverage remains the standard policy limit. Seventy-four percent of the companies surveyed offered a standard policy of $1 million/$3 million, while 14 percent of companies had standard policy limits that were higher than $1 million/$3 million and 11 percent had lower limits as their standard policy (see page 5).

Several Factors May Go Into the Choice of Policy Limits

Employer, Hospital or State Requirements

The hospital or surgery center where anesthesiologists work may set a minimum level of insurance they must carry. To obtain and maintain privileges, the anesthesiologist will need to at least match the minimum level of coverage. States also may set minimum levels of insurance as a requirement for licensure.[1]

Location of Practice

Malpractice insurance availability and the state and local environments may be important determinants of limits. Insurers' capacity to offer malpractice insurance may be a limitation, so the anesthesiologist will need to find out what limits are offered by carriers licensed in their state. In states where there has been effective limitation of noneconomic damages, premiums have been held constant over a long period of time, and anesthesiologists may be more comfortable with lower limits.[2] State legislative actions that may limit payment of large claims are:

Noneconomic damage limits: Limits payment on pain and suffering.

Periodic payment of damages: Damages are paid over the period they are intended to cover rather than as a lump sum.

Abolition of collateral source rules: Prevents duplicate collection of damages already paid by another party.

Limiting of attorneys' fees: Controls the size of contingency fees using a sliding scale.

Cost

Clearly cost is a consideration, as in any insurance coverage. For a single carrier in Washington State, carrying individual case limits of $2 million is 23 percent more expensive than a $1 million limit, and $5 million is 52 percent more than a $1 million limit. Anesthesiologists will need to work with their insurance company or insurance broker to find out the best pricing available and then determine value for themselves.

Personal Considerations and Asset Protection

A physician's own personal comfort level and personal circumstances also are important. Anesthesiologists may be held personally liable for any award that exceeds policy limits. Early in a physician's career, he/she may want to conserve resources and carry lower limits. As a physician matures and has more assets to protect, he/she may want to increase limits to protect against the unlikely event of a large judgment that exceeds policy limits. Finally, as physicians consider retiring and purchasing a reporting endorsement ("tail"), they may want to increase their policy limits so they are protected against inflation of malpractice awards in the future. These are all issues physicians may want to discuss with their financial planners and legal advisors.

What Does the ASA Closed Claims Project Tell Us About Claims Payment and Limits?

Of the 7,328 claims currently in the ASA Closed Claims Project database, there are 248 claims for events that occurred in the year 2000 or later. Among these 248 claims, payment was made on behalf of the anesthesiologist in 108 claims (44 percent), no payment was made in 134 claims (54 percent), and in the remainder, payment information was missing.

Payments to defendants on behalf of anesthesiologists ranged from $1,250 to $2 million with a median payment of $115,000. Ninety-six percent of all anesthesiologist payments were $1 million or less. Thirty percent of payments on behalf of anesthesiologists for events in 2000 or later were <$50,000, 75 percent were <$450,000, and 80 percent were <$500,000. There were four payments of >$1 million made on behalf of anesthesiologists for claims in 2000 or later. One of these four payments may have been made on behalf of two anesthesiologist defendants. The others represented single anesthesiologist-defendants, so these claims would have exceeded $1 million policy limits. As a disclaimer, 158 of these claims were for events from the calendar year 2000. Other high-value claims may still be open, and further claims development (and high payments) may occur. These preliminary results are consistent, however, with an earlier analysis showing 4 percent of payments >$1 million by all parties in claims (surgeons and hospitals in addition to anesthesiologists).[3]

Our results also are similar to the experience of all physicians in Texas between 1990 and 2003. This study found that payments stacked up at or near the policy limits,

especially with smaller policies, and that physician out-of-pocket payments were uncommon.[4]

In summary it seems that $1 million level coverage is common in the nation. In cases litigated or settled against anesthesiologists since 2000 and included in the ASA Closed Claims Project database, less than 3 percent of the payments on behalf of anesthesiologists were for more than $1 million.

References

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