

Professional Liability Trends 2014 – All Quiet on the Western Front ...

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Committee on Professional Liability

The ASA Committee on Professional Liability reports annually on trends in malpractice insurance for anesthesiologists. A majority of anesthesiologists purchase insurance from a medical liability insurance company, some have insurance provided by a hospital or health system that insures itself and its employees, and a few obtain insurance from a Risk Retention Group. Staff from the Anesthesia Closed Claims Project conducted a survey of Medical Liability Insurance Companies in May-July 2014 on the Committee's behalf. The twenty-five U.S. companies which responded to the 2014 survey provide insurance to approximately 16,000 anesthesiologists throughout the United States. Information concerning costs of premiums, policy limits, premium differences between general anesthesiologists and anesthesiologists specializing in chronic pain management, as well as other trends in malpractice insurance were obtained.

Insurance Terms Primer

Medical Liability Insurance Companies are physician-owned medical professional liability insurers formed to provide affordable insurance protection and minimize risk. They are licensed and regulated by each state in which they sell insurance. Risk Retention Groups (RRGs) are business entities which assume and spread liability risk across all of its members. They are chartered and regulated in one state, but sell liability insurance in any state and are only subject to regulation by the state in which they are chartered. Physicians who purchase insurance from an RRG will not have access to insolvency guaranty funds in the state where they practice. Individual policies may be assessable long after a physician leaves the RRG.



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Occurrence policies are a traditional type of professional liability insurance policy which affords an insured practitioner coverage for a claim if the policy was in effect when the incident actually happened regardless of when in the future a claim is made. It can take many months after an adverse event for a claim to be made and many years for an incident to be closed, making it very difficult for actuaries to accurately predict the cost of a future claim and to price premiums appropriately. Occurrence policies provide the most comprehensive coverage, but are the most costly.

Claims-made insurance policies have become far more prevalent. A claims-made policy affords an insured practitioner coverage for a claim that is reported while the policy is in effect. Although initial premiums are lower than a comparable occurrence policy, they increase over time. Should a practitioner change insurance companies or retire, protection for incidents which may have occurred but have not yet been reported must be purchased from the current insurer ("tail coverage") or from a future insurer to cover retroactive events ("nose coverage"). If a practitioner stays with an insurance company for 5-7 years, the claims-made coverage is considered "mature."

Claims-paid insurance policies cover a practitioner only if the policy is in effect when the claim is actually paid. The initial premium cost is lower than for a claims-made policy because it is based on claims actually settled in the current year and projected for the following year. Premiums increase over time and policies may be assessed retroactively as the likelihood of a practitioner having a claim increases. This coverage is offered by Risk Retention Groups rather than Medical Liability Companies; data from practitioners covered by this type of insurance are not included in the survey.

Policy limits are quoted as a fraction, for instance, \$1 million/3 million. In this example, during a policy year, each claim is covered up to \$1 million with a maximum of three such incidents being insured in that same policy year.

Policy Limits

In 2014, 67 percent of companies reported that their most common medical liability policy had limits of \$1 million/\$3 million, 25 percent reported that their most common policy had higher limits, and 8 percent had lower policy limits. In 2013, 72 percent of surveyed companies reported their most common policy limits of \$1 million/3 million with only 20 percent offering higher limits.¹ 2014 is the first year surveyed

Average Premiums for Mature \$1M/\$3M Policy Limits for Anesthesiologists

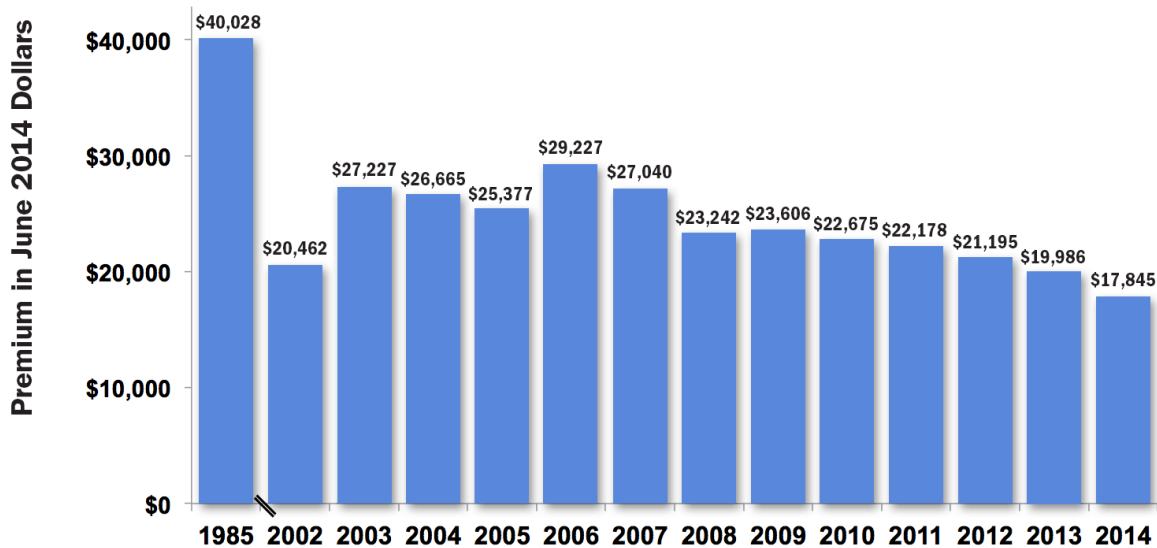


Figure 1: Average premiums for anesthesiologists have been declining slightly but steadily for the past several years.

for the most common type of policy offered. 86 percent of companies were offering claims-made policies either exclusively or for the vast majority of their policyholders; only 14 percent wrote occurrence policies. These trends will bear watching in future years.

2014 Premiums for Anesthesiologists

The cost of professional liability insurance is affected by a number of variables. The historical size of payouts (which has been increasing particularly in urban areas) and the frequency of claims (which has been decreasing nationwide) are major drivers. Jena et al.² looked at malpractice data from 1991-2005 for physicians covered by one professional liability insurer with a nationwide client base and found that across 25 specialties, in each year during the study period, 7.4 percent of physicians had a malpractice claim, but only 1.6 percent led to indemnity payment. Viewed differently, 78 percent of claims led to no payment to a plaintiff. They found that physician specialty was correlated to the frequency of claims, with neurosurgery and cardiothoracic surgery being highest, pediatrics and psychiatry being the lowest with anesthesiology falling near the middle. Interestingly, specialties most likely to face indemnity claims were often not those with the highest average payments. Among all years, 66 payments exceeded \$1 million; anesthesiologists accounted for 7 of these (10.6 percent). Other drivers of

premiums are the “non-loss related” expense the insurance company bears to defend a claim (which can be substantial), an individual’s personal claims history and geography. Professional liability insurance premiums are regulated primarily at the state level and there is a variable degree of oversight provided. Some states have enacted malpractice tort reforms, instituting such initiatives as caps on the non-economic damages which can be awarded to a successful plaintiff, limiting attorney’s contingency fees, and requiring disclosure of expert testimony. Malpractice insurance premiums for anesthesiologists have been declining slightly but steadily for the past several years (Figure 1). In 2014, the average premium for mature \$1 million/\$3 million policies for anesthesiologists was \$17,845 (range of \$3,911 to \$50,621). Premiums varied markedly based upon state, rural vs. urban practice settings, and physician claims history. The District of Columbia, Florida, and Illinois had average premiums of \$30,000 or above, as in the past. In contrast, Midwest states with many rural regions (i.e., Iowa, Minnesota, Nebraska, South Dakota, and Wisconsin) had average premiums of \$10,000 or less. Companies were asked if they give reductions in liability insurance premiums for anesthesiologists who complete simulation training or other patient safety educational activities. Of the 23 companies responding to this question,

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Average Premiums for Mature \$1M/\$3M Policy Limits: Surgical Anesthesia vs. Pain Management

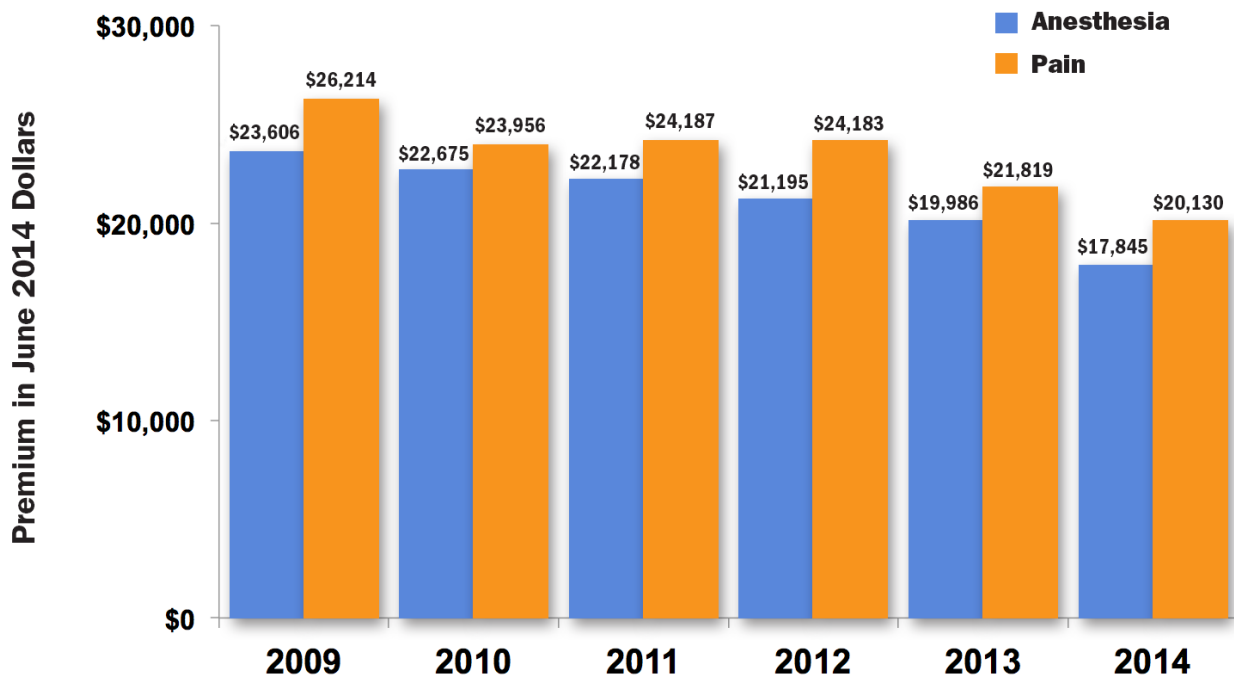


Figure 2: Average premiums for chronic pain management anesthesiologists are consistently higher than premiums for other anesthesiologists.

14 (61 percent) did offer premium reductions or credits for such activities. The most common activities contributing toward premium discounts or credits were completion of company specific risk reduction seminars or on-line educational courses. Three companies specifically included simulation training in the activities that contribute toward premium reductions or credits and one included EMR and EPW discounts.

Premiums for Chronic Pain Management Anesthesiologists

Premiums for mature \$1 million/\$3 million policy limits for pain management anesthesiologists declined by 8 percent in 2014 compared to the inflation adjusted 2013 rate, for a 2014 national average premium of \$20,130. However, premiums for anesthesiologist pain specialists remained consistently about 10 percent higher than for other anesthesiologists (Figure 2). Nearly two thirds of companies (63 percent) reported higher malpractice premiums for pain management

Premiums for Chronic Pain Management Compared to Anesthesiologists, 2014

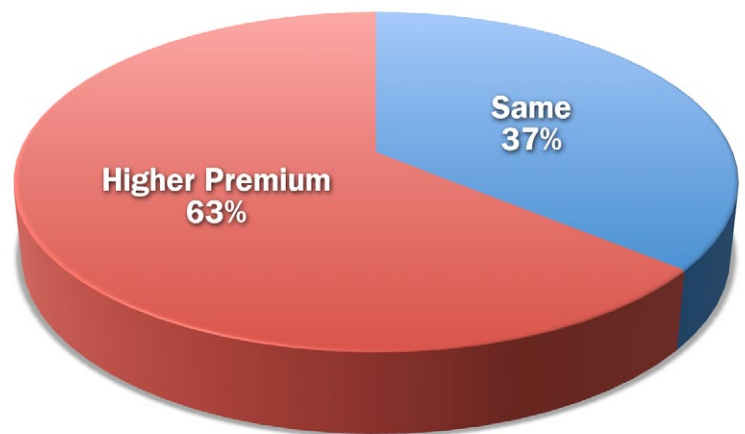


Figure 3: Almost two-thirds of companies have higher premiums for chronic pain management anesthesiologists than for other anesthesiologists.

anesthesiologists compared to premiums for physician anesthesiologists who do not manage chronic pain (Figure 3). Half of the companies reported special qualification requirements for physicians performing invasive chronic pain management and half did not. Special qualifications required by companies commonly included fellowship training and board certification.

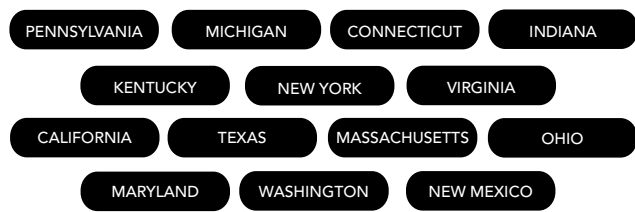
Other Findings

The Affordable Care Act (ACA) has led to consolidation of physician practices and purchase of practices by hospitals and healthcare systems many of whom insure themselves and their employees. When asked “During the past few years, have you observed competition in the anesthesiology malpractice insurance market increasing, decreasing, or remaining about the same this year?” most companies (64 percent) responded that competition was about the same. None saw a decrease and 36 percent reported increasing competition. Companies were also asked whether they currently provide policies for anesthesia groups or corporations. 24 of 25 respondents do offer such policies in addition to individual anesthesiologist policies. The most common policy limits for group policies were \$1M/\$3M (75 percent of companies that offer such policies). Two companies provide corporate coverage at lower policy limits and four companies provide corporate coverage at higher policy limits. Premiums for corporate coverage are generally based on the number of providers covered in the policy. Other factors such as risk adjustment may also contribute toward corporate policy premiums.

The healthcare marketplace is undergoing transformative change under the ACA. In addition to consolidation of physician practices and a migration of many practitioners from being business owners to an employed status, there is an increased penetration of EMRs and a new focus on measuring quality of care. Each of these trends may have an important impact on insuring physician liability in the next several years. Stay tuned!

References:

1. Domino KB. Medical liability insurance: the calm before the storm? *ASA Newsl.* 2013;77(10):54-56.
2. Jena AB, Seabury S, Lakdawalla D, Chamdra A. Malpractice risk according to specialty. *N Engl J Med.* 2011;365(7):629-636.



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