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MAKING YOUR HEALTHCARE ORGANIZATION MORE INSURABLE

A companion guide to Parker, Smith & Feek's "How to Make Your Healthcare Organization More Insurable" webinar presentation

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Medical Professional Liability Claim Trends and Risk Mitigation Strategies

Parker, Smith & Feek's recent webinar, "How to Make Your Healthcare Organization More Insurable," featured valuable insights from account executives and healthcare risk management experts Noel Murata and Danielle Donovan. Murata and Donovan shed light on how today's hard market conditions are impacting medical professional liability claim trends and how insurance carriers are responding.

Market Outlook

Murata highlighted a noteworthy shift in indemnity payments during Q1 and Q2 of 2023, with a notable increase reaching approximately $775 million, according to data from Medical Liability Monitor. This increase followed a decline during the pandemic when court cases were being put on hold.

> "Now that things are up and running, we're starting to see not only severity come back up, but [also] the amount and frequency of claims starting to increase just to clear through that dead period we have there in the court cases," she said.

Murata stressed that substantial indemnity payments from carriers are expected to persist over the next couple of years. This trend of increasing severity in claims has been significantly affecting insurance carriers and, in turn, the rates they are charging.

Insurance carriers judge their financial stability based on a combined ratio, a measure of profitability typically expressed as a percentage. The value is determined by adding up incurred losses and expenses and then dividing the result by the earned premium.

> "The higher your combined ratio, really anything over 100%, the less financially stable you are as a carrier," she emphasized. "So that means you're paying out more in indemnity payments than you are receiving from a premium standpoint."

Medical Professional Liability Claim Trends and Risk Mitigation Strategies

According to Murata, this trend of higher combined ratios has been evident since 2016. Following steady increases averaging about 3% nationally in 2022 and 2023, a continuation of rate hikes is anticipated. These increases are seen as necessary to compensate for the elevated combined ratios and associated losses experienced by carriers. As such, businesses should be prepared for ongoing adjustments in the insurance premiums they are paying.

Murata said carriers are also tightening on certain classes in the excess insurance market, even limiting their ability to offer specific limits for particular classifications.

CLAIM CAUSES

Donovan provided insights into the predominant causes driving the anticipated trends in medical professional liability (MPL) claims.

Drawing from data provided by Candello, a national database of MPL claims built by CRICO (the MPL insurer of the Harvard medical community), the period spanning 2018 to 2022 witnessed cumulative incurred losses exceeding $10 billion from both hospital and physician group claims.

Donovan delved into the primary risk areas faced by healthcare organizations in recent years. She highlighted that OB-related treatment accounted for some of the highest severity yet lower frequency claims.

> "One example of these nuclear verdicts, where you're seeing seven, eight, nine-figure verdicts coming through, is a newborn brain damage case from March of 2020 in Iowa, with an almost $100 million reward," she said. "That's not uncommon, unfortunately, to see for these types of claims."

On the other hand, surgical and medical treatment, along with diagnosis-related claims, constituted the majority of higher frequency and higher severity cases. Donovan referenced a notable misdiagnosis case in Pennsylvania in 2022, which settled for nearly $20 million, underscoring the significant financial implications of these types of claims.

RISK MITIGATION STRATEGIES

Donovan stressed the importance of healthcare organizations demonstrating to carriers that they are a good risk in today's challenging market. She said that beginning to prepare for the renewal process 90-120 days prior to renewal is an excellent way to start.

> "Working with a good broker who is starting that pre-renewal conversation early is imperative," she emphasized. "These conversations should encompass reviewing how your program is structured, what your current retention levels are, what your deductible is, and how your limit or program structure compares to others."

Additionally, Donovan recommended direct (face-to-face or virtual) meetings with underwriters. These discussions should delve into program specifics, address questions, and highlight awards or achievements your organization has received, particularly those not publicly disclosed. Highlighting recent loss exposures and detailing mitigation efforts is also crucial.

> "If you're a hospital, these underwriters are going to look at things like Leapfrog and Care Compare scores," she added. "Think about things like reductions in your hospital-acquired infections, reductions in fall rates, and things that make you look favorable and like you are constantly working towards improvement."

Donovan said that maintaining a good claims handling process and being prepared to discuss any large paid claims, policies and procedures implemented, and lessons learned from those claims are other great ways to show underwriters that you are an insurable organization.

According to Donovan, continuing to practice good risk management and safety practices and highlighting those to underwriters is yet another best practice. Collaborating with your carriers' risk consultants and going through an annual or biannual risk assessment is a great way to accomplish this.

> "I think there was a lot of history of people being resistant to going through risk assessments on the carrier side due to the thought that this will be used against you," she said. "But really, I think that has shifted over the last several years, and carriers are really looking at these risk assessments as your commitment to continuous improvements. Engaging with them gives you an opportunity to see not only where your areas of improvement are but also show that you're committed to patient safety and reducing overall medical harm, which will be favorable to you in a renewal."

Contact an experienced broker for more information about how your healthcare organization can mitigate risks and get more favorable rates in these hard market conditions.

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Cybersecurity

Ransomware attacks in the healthcare industry increased by 750% between February and March 2023. Thomas Lipitz, IMA Financial Group associate cyber broker, cites this as a key reason why experts are predicting a hardening of market conditions by the end of Q4 of 2023.

In September, Parker, Smith & Feek led a virtual discussion on current cyber risk trends in the healthcare industry as part of a webinar titled "How to Make Your Healthcare Organization More Insurable." Lipitz, one of the four speakers of the webinar, addressed today's market conditions, prevalent challenges organizations have been facing, and some key risk mitigation strategies to help healthcare organizations stay ahead of ever-evolving cyber risks in 2024.

Market Update

Lipitz said carriers have become much more competitive and that the marketplace is currently in the insured's favor.

> "As of today, our cyber risk team has been able to negotiate from a flat rate renewal all the way down to about a 10% reduction. We've been able to get some premium relief just due to market conditions [alone]."

However, while the market is still experiencing soft conditions, the rise in ransomware attacks experienced this year is causing experts to predict premium increases as we enter 2024, likely starting anywhere from 3-8%.

Lipitz added that coverage restrictions have become more apparent as data privacy has become a focal point in the cyber insurance marketplace.

> "[Biometric information exclusions are included] on most policies, but we've been successful in the past in negotiating those off. We just need to get the right underwriting information to try to get those removed."

Cybersecurity

RISKS TO WATCH

With a significant increase in cyberattacks in the healthcare sector this year, experts are anticipating market conditions to harden in the coming months. Lipitz cited a healthcare conglomerate incurring $100 million in lost revenue after being targeted in April, as well as attacks on casino giants MGM and Caesars that also resulted in major loss revenues.

> "Sometimes you have the option to elect to pay the ransom," Lipitz said. "That's your [organization's] decision and up to your breach coach. With that being said, if you could do that, you could avoid the daily loss. Right now, we're seeing MGM losing approximately $8.4 million a day while Caesars paid."

Data breaches are also a top-of-mind cyber risk for healthcare organizations. This year, millions of patient records at Shields Healthcare Group and Broward Health were compromised in data breaches.

> "Let's just say two million records had been breached," Lipitz illustrated. "To give you a dollar figure on what that actually means: once you go through incident investigation, the notification process, and any class action lawsuits that could happen for the record breach, you could see up to approximately $15.2 million in overall cost."

Lipitz emphasized the importance of data privacy moving into 2024, especially as pixel and website tracking technologies are another significant cyber concern for the healthcare industry. Wrongful collection coverage can provide coverage in situations where an organization doesn't inform you that your users' data is being collected, doesn't allow you to opt out, or shares your users' data with a third party without obtaining informed consent.

> "We could try to secure [this coverage] for you," he said. "But we have to have you complete a supplemental application and then underwrite to that risk."

RISK MITIGATION STRATEGIES

Lipitz highlighted several measures healthcare organizations can take to make themselves "more insurable" to carriers and protect themselves against the increasing prevalence of ransomware attacks and other cyber risks going into 2024.

+ Prepare for the renewal process 120-125 days prior to renewal.
+ Utilize your cyber carrier's risk management tools, staff trainings, and free cyber security scans.
+ Implement technical controls such as multi-factor authentication, an endpoint protection platform (EPP), email filtering solutions, selective granting of administrative rights, prompting patching cadence for critical/emergency patches, backups maintained offline, and employee phishing training and testing.
+ Security Operations Center (SOC) manned 24/7.
+ Endpoint Protection and Response (EPR).

Lipitz emphasized the importance of developing a breach response and disaster recovery plan.

> **"You must have those at this point, and if not, I would recommend reaching out to your broker, because a lot of times, carriers have access to discounts or free tabletop exercises to help you craft and then test these incident response and disaster recovery plans," he said.**

Contact an experienced broker for more detailed information about how your healthcare organization can ramp up cybersecurity measures and obtain more favorable rates in harder market conditions.

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