NATIONAL MEDICAL MALPRACTICE TRENDS

OSHRM SOHA
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NATIONAL MEDICAL MALPRACTICE TRENDS: 2016

Overview

- Positive and Negative Medical Malpractice Trends
- Medical Malpractice Insurance Trends
- Medical Malpractice Claim Trends: Physicians and Hospitals
- Emerging Trends
- Concluding Thoughts

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National Medical Malpractice Trends: Positives and Negatives
2016: The National Medical Malpractice Environment

The Positives

- Claims counts/frequency still down markedly (historic low?)
- Severity rising slowly but actuarially predictable and manageable
- Increased competition in the insurance market makes for favorable pricing across all health care professional liability segments
- Industry Combined Ratio: HPL has been profitable for 10+ years
- Tort reform laws continue to be upheld in most states
2016: The National Medical Malpractice Environment

The Negatives

- A few carriers have recently withdrawn from HPL
- Claims costs/expenses rising
- The numbers of large verdicts is increasing nationally
- Shock verdicts ($10M+): ripple effect?
- More competition drives down rates further: too low?
- More systemic (batch) claims; examples to follow
National Medical Malpractice Insurance Trends
MEDICAL MALPRACTICE INSURANCE TRENDS

- Medical malpractice continues as the most profitable line of P&C insurance: Best’s Combined Ratio of 93.2 as of 12/31/14
- Fierce competition and rate decreases continue across all segments: hospitals, physicians, long term care, managed care, facilities
- Market consolidation by acquisition continues and likely to continue.
- Reinsurance market has been favorable; more capital coming in
- Continued growth of health care captives/RRGs: 253 Cayman health care captives; 100 Vermont captives
- New carrier entrants 2014-2016: Liberty International, AXIS, RLI, Hallmark Pro, ProPraxis
MEDICAL MALPRACTICE INSURANCE TRENDS

- Market consolidation by acquisition continues and likely to continue: e.g. Med Pro buys PLICO; MAG invests in COPIC (both in 2015)
- Reinsurance market has been favorable; more capital coming in
- Continued growth of captives/RRGs: 300+ Cayman health care captives; 145 health care RRGs, numerous captives
- A.M. Best: “…the medical professional liability sector is stable…”
- Reform has had little or no impact to date aside from EMR issues in litigation
- Price competition in every segment especially hospitals and physicians/groups
National Medical Malpractice Claim Trends
National Medical Malpractice Claim Trends – Physicians
Average Indemnity Payments by Physician Specialty (2013 dollars)

- Average indemnity payment for all healthcare specialties (2009-2013) was $342,384.

- Average indemnity payments ≥$400,000:
  - Neurosurgery
  - Neurology - nonsurgical
  - Obstetric and Gynecologic Surgery
  - Pediatrics

<table>
<thead>
<tr>
<th>Specialty</th>
<th>Payment Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Neurosurgery</td>
<td>≥$400,000</td>
</tr>
<tr>
<td>Neurology - nonsurgical</td>
<td></td>
</tr>
<tr>
<td>Obstetric and Gynecologic Surgery</td>
<td></td>
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<tr>
<td>Pediatrics</td>
<td></td>
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<tr>
<td>Anesthesiology</td>
<td></td>
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<tr>
<td>Radiology</td>
<td></td>
</tr>
<tr>
<td>Pathology</td>
<td></td>
</tr>
<tr>
<td>Cardiovascular and Thoracic Surgery</td>
<td></td>
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<tr>
<td>Emergency Medicine</td>
<td></td>
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<tr>
<td>Internal Medicine</td>
<td></td>
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<tr>
<td>Gastroenterology</td>
<td></td>
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<tr>
<td>Urologic Surgery</td>
<td></td>
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<tr>
<td>Otorhinolaryngology</td>
<td></td>
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<tr>
<td>All Healthcare Specialties</td>
<td></td>
</tr>
<tr>
<td>General Surgery</td>
<td></td>
</tr>
<tr>
<td>Gynecology</td>
<td></td>
</tr>
<tr>
<td>Other Nonsurgical Specialties</td>
<td></td>
</tr>
<tr>
<td>General and Family Practice</td>
<td></td>
</tr>
<tr>
<td>Orthopedic Surgery</td>
<td></td>
</tr>
<tr>
<td>Ophthalmology</td>
<td></td>
</tr>
<tr>
<td>Radiation Therapy</td>
<td></td>
</tr>
<tr>
<td>Paraprofessional</td>
<td></td>
</tr>
<tr>
<td>Cardiovascular Diseases - nonsurgical</td>
<td></td>
</tr>
<tr>
<td>Psychiatry</td>
<td></td>
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<tr>
<td>Dermatology</td>
<td></td>
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<tr>
<td>Plastic Surgery</td>
<td></td>
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<tr>
<td>Oral Surgery</td>
<td></td>
</tr>
<tr>
<td>Resident/Intern</td>
<td></td>
</tr>
<tr>
<td>Dentists</td>
<td></td>
</tr>
</tbody>
</table>
## Most Expensive Outcomes (2009-2013) Physician Claims

<table>
<thead>
<tr>
<th>Resulting Medical Condition</th>
<th>Closed Claims</th>
<th>Paid Claims</th>
<th>% Paid-to-Closed</th>
<th>Total Indemnity</th>
<th>Average Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiac/cardiorespiratory arrest</td>
<td>2,821</td>
<td>714</td>
<td>25.3</td>
<td>$245,721,905</td>
<td>$344,148</td>
</tr>
<tr>
<td>Brain damaged infant</td>
<td>536</td>
<td>198</td>
<td>36.9</td>
<td>$156,882,467</td>
<td>$792,336</td>
</tr>
<tr>
<td>Birth trauma</td>
<td>540</td>
<td>223</td>
<td>41.3</td>
<td>$122,633,510</td>
<td>$549,926</td>
</tr>
<tr>
<td>Breast cancer</td>
<td>808</td>
<td>259</td>
<td>32.1</td>
<td>$119,236,299</td>
<td>$460,372</td>
</tr>
<tr>
<td>Accidental puncture or laceration during a procedure</td>
<td>866</td>
<td>263</td>
<td>30.4</td>
<td>$88,528,124</td>
<td>$336,609</td>
</tr>
</tbody>
</table>
Top Chief Medical Factors (2009-2013) Physician Claims

- Diagnostic Error second by number of closed claims; highest by average indemnity payment.
Ob/Gyn MPL Data
(2013 Dollars)

- 286,000 closed claims in *all specialties* since 1985
- Ob/Gyn has 2nd highest number of claims during last 5 years (2009-2013)
- Ob/Gyn claims 21% more expensive to defend
- Percentage of paid claims in Ob/Gyn (30%) significantly *above the norm* (27%)
- Total indemnity paid since 2009 = $667 million (#1 specialty)
- Ob/Gyn had 3rd highest average indemnity since 2009 = $420,125

April 2015
PIAA: Our Expertise is Medical Liability
Our Passion is Quality Healthcare
Diagnostic Error – Specialty Groups (2009-2013)

- **Non-Surgical**
  - 30% Diagnostic Error
  - 70% Other CMF

- **Surgical**
  - 9% Diagnostic Error
  - 91% Other CMF

- **Hospitalist**
  - 22% Diagnostic Error
  - 78% Other CMF

- **Advanced Practice Providers**
  - 26% Diagnostic Error
  - 74% Other CMF
### Physician Trends of Note

5 Year Intervals (2004-2008) and (2009-2013)

<table>
<thead>
<tr>
<th>Classification</th>
<th>% Paid-to-Closed</th>
<th>Average Indemnity</th>
<th>Average ALAE</th>
</tr>
</thead>
<tbody>
<tr>
<td>OB/Gyn</td>
<td>Lower</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Radiology</td>
<td>Same</td>
<td>Higher</td>
<td>Higher</td>
</tr>
<tr>
<td>Medication Errors</td>
<td>Higher</td>
<td>Higher</td>
<td>Higher</td>
</tr>
</tbody>
</table>
Prevalence and Characteristics of Physicians Prone to Malpractice Claims.

- Approximately 1% of all physicians accounted for 32% of all claims in the NPDB
- 2005-2014 time frame; 67,000 paid claims
- Risks of recurrence varied greatly by specialty: e.g. neurosurgery, orthopedic surgery, general surgery, plastic surgery, OB/GYN had 2x greater risk than IM
- Only 6% of all active U.S. physicians had a paid claim in that time frame
National Medical Malpractice Claim Trends – Hospitals
BerkleyMed’s Proprietary Database

Net Patient Service Revenue

- $100M - $500M: 21%
- $500M - $1B: 75%
- $1B+: 80%

Percentage of the market housed in our database

Multiple Facility Types

- Acute care
- Teaching
- Children’s

2,722 Hospitals Around the Country / 740 Health Systems

Service Levels of Care

- Trauma Level
  - Level 1: 30%
  - Level 2: 30%
  - Level 3: 40%

- OB Level
  - Level 3: 30%
  - Level 2: 30%
  - Level 1: 40%

* As classified by AHA data

21 of the top 25 largest non-profit hospital systems (as identified by Becker’s Hospital Review)
Hospital Claims for High-Risk Services Generate over Half of Total Liability Dollars

Approximately 45% of claims costs come from two services - Obstetrics and Surgery.

Based on closed Claims data from BerkleyMed’s proprietary hospital malpractice claims database.
Berkley Med Hospital XS Claims: Settlement Year

All departments

Ground up frequency has been slightly declining, while excess frequency has been flat.

<table>
<thead>
<tr>
<th>Settlement Year</th>
<th>Ground-Up</th>
<th>Excess of $1M</th>
<th>Excess of $3M</th>
<th>Excess of $5M</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>48.3</td>
<td>4.03</td>
<td>1.28</td>
<td>0.47</td>
</tr>
<tr>
<td>2011</td>
<td>46.8</td>
<td>3.95</td>
<td>1.29</td>
<td>0.50</td>
</tr>
<tr>
<td>2012</td>
<td>45.2</td>
<td>4.26</td>
<td>1.46</td>
<td>0.56</td>
</tr>
<tr>
<td>2013</td>
<td>48.0</td>
<td>4.12</td>
<td>1.28</td>
<td>0.56</td>
</tr>
<tr>
<td>2014</td>
<td>45.3</td>
<td>4.04</td>
<td>1.26</td>
<td>0.45</td>
</tr>
</tbody>
</table>

Growth Rate
-1.0% 0.5% -0.3% 0.3%
Ground up settlement values have grown ~5% per year; settlement values on catastrophic claims had been flat until 2015.
## Berkley Med 2015: XS Hospital Claim Trends of Note

<table>
<thead>
<tr>
<th>Claim Classification</th>
<th>Frequency</th>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstetrics</td>
<td>Flat</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Radiology</td>
<td>Higher</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Diagnostic</td>
<td>Higher</td>
<td>Higher</td>
</tr>
<tr>
<td>Hospital Acquired Infections</td>
<td>Higher</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Falls</td>
<td>Lower</td>
<td>Lower</td>
</tr>
<tr>
<td>Neurological</td>
<td>Higher</td>
<td>Higher</td>
</tr>
</tbody>
</table>
Growth in expense payments have outpaced growth in settlement values, 8% versus 6%.

Expense payments on catastrophic claims have seen more modest growth of 2-3%.
About one out of every 3,711 births results in a medical malpractice claim with indemnity.

The average value of these cases, including defense, is about $1.1M.

The cost per delivery to cover liability is, on average, $296.

Source: BerkleyMed, 2015
Settlement Year Claim Frequency

Obstetrics

The frequency of obstetric related claim settlements has stabilized in recent years.

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**Frequency per 10,000 Deliveries**

<table>
<thead>
<tr>
<th>Settlement Year</th>
<th>Ground-Up</th>
<th>Excess of $1M</th>
<th>Excess of $3M</th>
<th>Excess of $5M</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>3.3</td>
<td>0.79</td>
<td>0.35</td>
<td>0.13</td>
</tr>
<tr>
<td>2011</td>
<td>3.4</td>
<td>0.79</td>
<td>0.41</td>
<td>0.19</td>
</tr>
<tr>
<td>2012</td>
<td>3.3</td>
<td>0.76</td>
<td>0.32</td>
<td>0.15</td>
</tr>
<tr>
<td>2013</td>
<td>3.6</td>
<td>0.82</td>
<td>0.43</td>
<td>0.23</td>
</tr>
<tr>
<td>2014</td>
<td>3.4</td>
<td>0.68</td>
<td>0.33</td>
<td>0.13</td>
</tr>
<tr>
<td>Growth Rate</td>
<td>1.0%</td>
<td>-2.4%</td>
<td>-0.7%</td>
<td>1.7%</td>
</tr>
</tbody>
</table>
Frequency of catastrophic radiology related claims has risen dramatically - especially for large claims; however, they only represent a small percentage of claims.
Settlement values of radiology related claims have been on the rise.
Hospital Excess Claims Review

Obstetrics

- Failure to diagnose fetal distress
- Failure to timely perform Cesarean
- Surgical care
- Shoulder dystocia

Radiology

- Batch events
- Interventional Radiology
- Monitoring
- Radiation Burns
- Communication
- MRI Safety
Hospital Claim Trends

Zurich Annual Benchmark Report

- Issued October 2015
- Overall trends reported for AY 2004 - 2012
- Over 363,000 claims and about $26 billion in estimated ultimate losses
- Zurich claims and underwriting data submitted to Zurich
- 2012 was the cut off year to allow for maturation of claims

Source: Zurich Insurance 2015
Hospital Claim Trends

Zurich 2015 Claims Analysis: Key Findings

- Claim frequency: “remains steady”
- Severity trending up. Rose 4% per year from 2007 to 2012
- IL, NY, PA lead in severity
- Frequency of large claims continues to rise
- Large claim pctg >$1M and those >$5M but moving at the same pace
- Children’s hospitals had the highest severity followed by teaching hospitals. These two types of facilities had much higher severity than others and markedly lower frequency.

Source: Zurich Insurance 2015
Loss Cost per OBE Zurich Claims

Loss costs by state

Average loss cost per OBE:
- Below $1,200
- $1,300 - $1,900
- $2,000 - $3,000
- $3,400 - $4,200
- $4,500 - $5,600

Source: Zurich Insurance 2015
Zurich: Facility Dashboards
Frequency, Severity, Loss Cost

Source: Zurich Insurance 2015
CNA Hospital Claim Trends

CNA 2015 Claims Analysis: Key Findings

- Study time frame: 2005-2014
- Claim frequency: “remaining constant”
- Severity trended up from 2005 to 2014
- Most claims were in three areas: inpatient medical unit, ED, OR/Procedure rooms and units
- Perinatal claims had the highest average indemnity
- Encourages “vigorous attention” in these areas: communication, credentialing and privileging, medication safety, patient falls, pressure ulcers

Source: CNA 2015
National MPL Trends: Emerging Trends
EMERGING TRENDS

Systemic Risk/Batch Claims

- Plaintiff’s bar more aware of these types of claims; greater return
- Plaintiff paints hospital as highly focused on profit
- Examples: Unnecessary stents, surgeries, MRSA, Hepatitis C, compounding pharmacy, fungal meningitis
- Carriers reporting increased frequency of these claims
- Underwriters like risks with a strong RM and Patient safety culture: good organizational communication, proactive approaches to crises including scenario planning and training
EMERGING TRENDS

Miscellaneous

- Anecdotal increase in claims severity in 2015 must be watched for continuation. Some reports of increased frequency, but not uniform
- Underwriters concerned about depressed reimbursement creating RM issues: e.g. staffing, etc.
- Radiology claims must be noted/managed, especially more interventional radiology claims
- Diagnostic claims are of concern to underwriters due to ongoing physician integration; changes the hospital’s risk profile
- Reform will alter the standard of care over time
National MPL Trends: Conclusions
NATIONAL MPL TRENDS 2016: CONCLUSION

- Frequency remains at historic lows; severity is predictable
- Possible uptick in 2015 must be watched for trend
- Integration/Reform has yet to notably impact MPL risk
- Integration: Shift to outpatient care reflected in claims; but lower severity
- Cost for plaintiff’s to pursue malpractice cases is a huge barrier
- Telemedicine: Very few cases
- The public’s perception of hospitals and the health care industry must be closely watched, especially with consolidation
- Managing patient expectations is crucial in a time of transition
THANK YOU!