MEDICAL LIABILITY
MONITOR
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ANNUAL RATE SURVEY ISSUE

OCTOBER 2013 VOL 38, NO 10

METHODOLOGY

RATE REPORT PRESENTS STATE-BY-STATE VIEW OF CHANGING MARKET

In this issue, we bring you our 23rd *Annual Rate Survey*. This survey provides a continuing overview of changing rates for physicians' medical professional liability insurance. It is a snapshot in time, reporting rates effective July 1, 2013.

It is a picture we paint state by state, county by county because where physicians practice largely determines the premiums they pay. This is because insurers base their rates on the aggregate claims experience in a particular geographic area. Because state insurance departments may regulate rates, state tort reforms can affect the cost and patient compensation funds may influence the total premium, it is impossible to project a common national picture.

Each year, we survey the major writers of liability insurance for physicians. We ask for manual rates for specific mature, claims-made specialties with limits of $1 million/$3 million—by far the most common limits. These are the rates reported unless otherwise noted.

We report on three specialties to reflect the wide range of rates charged: internal medicine, general surgery and obstetrics/gynecology.

With the exception of Medical Protective, Princeton and Independent Nevada Doctors Insurance Exchange, all rates shown were volunteered by their respective companies. Those companies' rates published herein were obtained

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OF BUTTERFLY WINGS & SEAGULLS

THE MEDICAL PROFESSIONAL LIABILITY INSURANCE MARKET CONTINUES TO DRIFT IN 2013: PLACID AND SERENE ON THE SURFACE, ARE FUNDAMENTAL CHANGES ROILING JUST UNDERNEATH? A LOOK AT SOME OF THE SMALL TRENDS AND NASCENT REFORM INNOVATIONS THAT COULD LEAD TO RADICAL CHANGES IN THE FUTURE.

by Chad C. Karls, FCAS, MAAA
Rate Survey Editor

Responses to the MEDICAL LIABILITY MONITOR's 2013 Annual Rate Survey are in, and the results are … (drum roll, please) … Déjà vu all over again, all over again.

The rate changes and insights provided by medical professional liability (MPL) insurers to this year's survey are pretty much the same as last year. And the year before. And the year before that.

We do take some pride in noting that we predicted this much when we wrote in last year's Executive Summary that the market in 2013 would continue in the same sleepy and contradictory fashion it has since 2006: Trending downward when it comes to rates and written premium, yet continuing to achieve above-average financial results.

We also took a risk last year, predicting that this state of affairs will most likely continue for some time—perhaps several years—before rates finally become insupportable. Three years after that point, we suggested, the market might begin to truly harden.

So we've been right (so far). But we do not take too much joy in it. Becalmed and bewildered is not an exciting place to be. And our enthusiasm for last year's prediction is dampened by our dismay at the increasing difficulty we now face in trying to find something new to say about the market this year.

The sad fact is, we could probably just reprint the 2012 Annual Rate Survey's Executive Summary with only minor changes to the actual numbers, and it would be just as applicable for 2013.

Instead, we thought we'd take this opportunity to dig a little deeper into this strange market. Things may look calm on the surface, but what's going on underneath? Is there turbulence down below that could rise up and create significant change in the future?

We will, of course, tally and update the actual rate changes, as small as they might be. And we will highlight, as we always do, some of the insightful comments made by survey respondents. These anonymous and unguarded comments oftentimes provide a more nuanced picture of where the market is and where it's heading than the hard numbers do.

But we will also take some time to focus briefly on a few of the early trends and fluctuations taking place today in both the healthcare and MPL environments. We're talking about the nascent ideas and sometimes out-of-the-box proposals that just might be the faint stirrings of more radical change to come.

As PIAA chief executive Brian Atchinson noted in an interview published in the July issue of the MEDICAL LIABILITY MONITOR and is still available on this publication's Blog at www.MedicalLiabilityMonitor.com: "There is a lot of change going on within the medical professional liability industry and marketplace, just as there is throughout the entire healthcare delivery system."

Last year's survey revealed that, for the first time, two companies had written policies for Accountable Care Organizations (ACOs). This year, another respondent

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noted that they had insured an ACO during the prior year. One swallow does not a summer make, and three companies writing coverage for ACOs may not be the beginning of a major new customer base. But it is something new and worth noting, evidence of the MPL industry's adaptability and responsiveness.

Some of the many patient safety initiatives and medical liability reform ideas of the past several years could also lead to new ways of doing business. If any of these initiatives prove effective and scale up, what effect might they have on the MPL industry? Impossible to say at this point, but again, worth keeping an eye on.

The Butterfly Effect

In the relatively new science of Chaos Theory there is something called the "Butterfly Effect." Chaos Theory came out of scientific research into weather prediction, a discipline that is in some ways similar to actuarial projection. It suggests there is a limit to our ability to project long-term outcomes, as multiple small permutations at the very beginning of any series of linear, connected events will grow exponentially in impact to have a substantial effect on large-scale outcomes.

Popularizations of Chaos Theory communicate this concept via the Butterfly Effect, the notion that a butterfly beating its wings in the South Pacific could potentially be the original cause of severe weather, months later, in the foothills of the Gila National Forest of New Mexico.

As the healthcare environment changes and we await the consequences of the Affordable Care Act (ACA), we might as well take this time to think about some of the new ideas and proposals being bandied about just now—potentially game-changing notions about how we might begin to deliver healthcare, pay for it and compensate patients for medical error.

But first, some context on where we are and how we came to be here.

The MPL Market Since 2006: Softly Hard or Hardly Soft?

Since 2006, the U.S. MPL insurance sector has seen direct written premium fall by roughly 20 percent, suggesting a soft market. At the same time that this traditional soft market indicator has been in free-fall, however, the industry's premium revenue has continued to outpace its claims expenses, with annual combined ratios for the sector coming in at well below 100 percent every year since 2006.

The combined ratio is a common insurance industry financial metric that compares the total cost of claims plus the money spent defending claims to the amount of premiums collected in a given year. Any number lower than 100 percent indicates underwriting profit (that is, profit before investment returns); anything over 100 percent represents an underwriting loss. The sector's combined ratio dropped below 100 percent in 2006 and

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MEDICAL LIABILITY MONITOR

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Subscriptions: Annual subscription rate $399, which includes monthly issues and the Annual Rate Survey. Subscriptions are available at www.mlmonitor.com or by calling 312-944-7900.

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through independent research and are believed to be accurate.

The rates reported should not be interpreted as the actual premiums an individual physician pays for coverage. They do not reflect credits, debits, dividends or other factors that may reduce or increase premiums. Rates reported also do not include other underwriting factors that can increase premiums.

States without compensation funds, by far the largest group, are reported first. Patient compensation fund states are grouped at the end of the survey.

In patient compensation fund states, physicians pay surcharges that range from a modest percentage to more than the base premium. Also, limits of coverage can differ in these states, which is noted with each PCF state.

When we contact survey participants, we ask them to provide data on all the states in which they actively market to physicians. We only report rates for companies that maintain filed and approved rates for each state in which they sell medical professional liability insurance. We try to capture the leading, active writers in each state, but every writer may not be included.

In comparing this year's report with previous reports, it is evident that the market is always changing. Many companies formerly included no longer sell physicians' malpractice insurance in certain states, do not currently entertain new business, have withdrawn from this line of insurance or no longer exist. The companies shown were available for business as of July 1, 2013.

We estimate that this survey represents companies that comprise 65 to 75 percent of the market; as such, it is the most comprehensive report on medical liability rates available.

The expanded rate report could not have been completed without the cooperation of the many people who work in the companies surveyed. Their cooperation is invaluable in providing this information to all who have an interest in medical professional liability.

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has remained below that threshold each year since—an astonishing seven consecutive years of underwriting profit. All indications suggest that 2013 will continue this remarkable streak.

To put this record into historical perspective, consider that for the 28 years between 1978 and 2005, the sector enjoyed a combined ratio under 100 percent only twice, once in 1989 and once again in 1994. To put this sector's recent financial results into a current perspective, all other property and casualty lines of insurance had combined ratios of 100 percent, or well above, in 2012. Only MPL managed an underwriting profit last year.

Chart No. 1

Overall Average Rate Change by Range

Range	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
> +100%	2.2%	0.0%	0.0%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
+70.0 to +99%	4.1	0.6	0.0	0.6	0.0	0.1	0.0	0.0	0.0	0.0
+50.0 to +69.9%	3.7	0.7	0.0	0.4	0.0	0.1	0.0	0.0	0.0	0.0
+25.0 to +49.9%	14.8	6.5	2.3	0.5	0.6	0.0	0.0	0.3	0.1	0.3
+10.0 to +24.9%	34.9	28.5	5.6	5.9	1.2	1.9	0.8	4.8	0.2	2.4
+0.1 to +9.9%	22.5	29.3	22.6	8.2	5.6	5.7	13.4	9.4	14.8	11.0
0.0%	13.2	24.0	46.6	53.1	49.9	54.2	67.0	55.1	59.2	57.6
-9.9 to -0.1%	4.7	8.4	15.1	21.0	20.8	22.1	14.9	27.8	15.7	17.2
-19.9 to -10.0%	0.0	2.1	5.1	6.5	15.6	12.0	3.6	2.2	7.9	7.8
-29.9 to -20.0%	0.0	0.0	1.3	2.3	5.2	3.7	0.3	0.2	2.0	2.6
< -30.0%	0.0	0.0	1.4	0.0	1.1	0.2	0.0	0.1	0.1	1.2

So while the industry has been able to sustain and enjoy very favorable financial results, it has also had to endure a prolonged soft market, when it comes to rates, that is also increasingly competitive.

The primary focus of last year's Annual Rate Survey Executive Summary was to provide context and commentary regarding how long this current market was expected to last. A year ago, we suggested it might be three years after the industry's financial results began to become unacceptable, and last year's financial results were anything but unacceptable. Thus, in our view, this protracted soft market—from a rate perspective—is likely to continue for at least several more years.

So let's talk briefly this year about some of the small and not-so-small trends that could have a substantial impact on MPL insurance over the long term.

Seagull vs. Butterfly Wings

Chaos Theory pioneer Edward Lorenz originally chose seagull wings as his central metaphor. It was the beating of the large seagull's wings, he said at first, that might affect the weather somewhere else later on. One of his Chaos Theory colleagues later suggested the more poetic "butterfly."

But the seagull metaphor is good for our purposes because all of the small-scale innovations we want to discuss this year are the result of three large and already established trends: Consolidation, MPL reform and Healthcare Reform—particularly the ongoing implementation of the ACA.

Consolidation is already a major trend affecting both the MPL sector and the healthcare industry. According to Delos "Toby" Cosgrove, MD, chief executive of the Cleveland Clinic, this consolidation in the healthcare arena is the natural result of the continued financial pressures facing the industry.

"What happened to airlines, what happened to supermarkets, what happened to bookstores?" Dr. Cosgrove asked in an interview published on BusinessInsider.com last November. "They all consolidated, they brought scale so they could drive efficiency. I think that's what's happening in healthcare right now."

This movement toward consolidation into larger healthcare organizations has impacted not only institutions, but also providers. As independent physicians struggle with the ever increasing demands placed on them, and the resultant capital investments needed to provide efficient care, they are increasingly turning to these larger healthcare organizations for help.

Merritt Hawkins, a Texas-based employment recruiter, released the results of a national survey the firm conducted between April of 2010 and March of 2011. Hawkins found that 56 percent of physician search assignments during that time were for hospital jobs, compared with just 23 percent five years earlier.

This is not the first time the healthcare industry has gone through a period of increased physician employment. Nor is it the first time the MPL insurance industry has had to respond to such a trend, assessing the possible implications for their business and adapting.

In a *BestWeek* article from September of 1994, the following concerns were identified for MPL regarding increased physician employment:

"Physicians are increasingly becoming employees of healthcare plans …"

"The traditional physician practices market is declining…"

"This era [of the independent physician] has all but ended with the market driven changes in healthcare systems that are under way…"

Despite these dire warnings from nearly 20 years ago, the physician professional liability insurance market remains relevant today, and continues to grow as an industry. So the question becomes, "will it be different this time?"

There is already evidence of a small, budding counter-trend in opposition. Some doctors in Florida have formed an Association of Independent Doctors to fight consolidation through physician

employment, according to a recent *Orlando Sentinel* article.

However, most healthcare experts believe that the movement towards physician employment will not only persist, but continue to swell. In addition to the passage of the ACA, the financial pressures in healthcare—continuing advancements in (costly) technologies and ever expanding regulatory requirements—are making it increasingly difficult for physicians to remain independent.

Medical Liability Reform

Until recently, almost all medical liability reform efforts focused on modifications to the current tort-based process of adjudicating claims of alleged medical negligence. Whether the proposed reform focused on expert witness requirements, the venue in which the claim could be brought or the amount of damages that could be recovered, the fundamental, tort-based process remained largely intact.

In two states, Florida and Georgia, medical liability reform proposals were introduced that would fundamentally alter the adjudication process completely. Proponents of these more comprehensive reform measures have suggested replacing the current, tort-based system with what they have coined a Patient Compensation System (PCS). The biggest changes under the proposed PCS are to: (1) replace the current court system with an administrative mechanism to resolve claims; and (2) redefine and, in so doing, broaden the types of events that merit financial consideration from the current negligence standard to an "avoidability" standard where at question would be, "Could the adverse medical outcome been avoided?" As with most types of large-scale, radical change, it is important to understand the intended consequences of the new system as well as the seemingly subtle issues and unintended consequences that might ensue.

As proposed under a PCS model, patients and their families would not need to retain an attorney in order to seek financial reimbursement for an avoidable medical event. Rather, they would be able to file a claim on their own. Claimants would not have to prove medical negligence, only that the adverse outcome could have been avoided if the procedure had been handled differently. Cases would be reviewed by an independent panel of medical experts made up of healthcare professionals.

Advocates claim that the faster resolution of claims, diminished attorney involvement and decrease in defensive medicine would ultimately reduce overall costs while allowing more injured patients access to compensation. But others have pointed out that attorneys are not barred from the PCS process as currently proposed, and both sides have the right to seek redress through traditional litigation if they don't like the outcome of the PCS process. This makes it difficult to see how a PCS would reduce overall costs.

Although there are a number of unresolved issues with the proposed PCS as written, successfully implementing a PCS in one state could start a larger trend that would have a significant impact on MPL.

Healthcare Reform – The Affordable Care Act

MPL is hardly mentioned in the entirety of the ACA, yet that legislation is destined to have a substantial impact on the MPL insurance sector. It's just that no one knows yet what that impact might be.

We and others have noted that 50 million more people having easier access to the existing healthcare system is bound to put a strain on that already stressed entity. This could lead to less individual face time with one's physician, potentially more clinical errors and ultimately more liability claims. That is a genuine concern, but upon reflection, is it overstated?

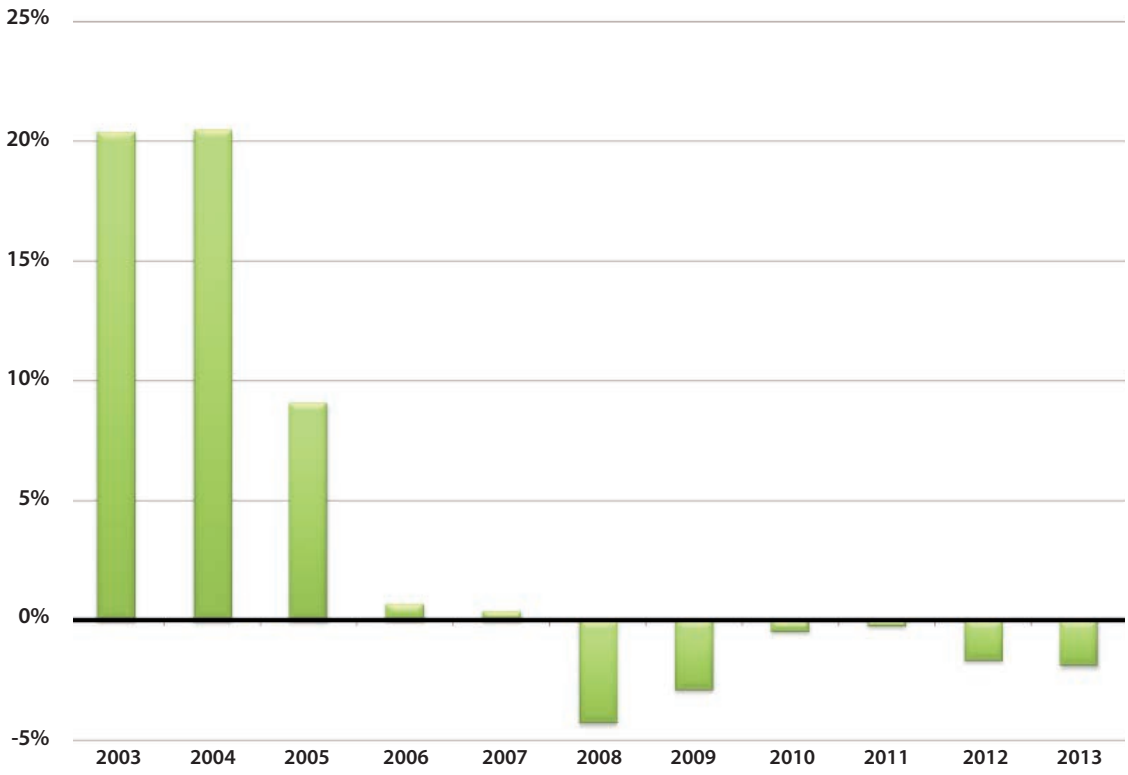
Mark Rothstein, Director of the Institute for Bioethics, Health Policy and Law at the University of Louisville School of Medicine in Kentucky, notes that healthcare reform "might actually reduce adverse events and medical malpractice claims."

"Despite the increased number of patient encounters associated with expanded access to healthcare" under the ACA, Rothstein wrote in a December 2010 *Journal of Law, Medicine & Ethics* article, "it is unlikely that the rate or number of medical malpractice claims will increase, and there is a reasonable chance they will actually decline. Ideally, improved healthcare quality associated with healthcare reform will substantially reduce the number of adverse events."

It's possible that Mr. Rothstein is correct.

Chart No. 2

Overall Average Rate Change (2003 - 2013)

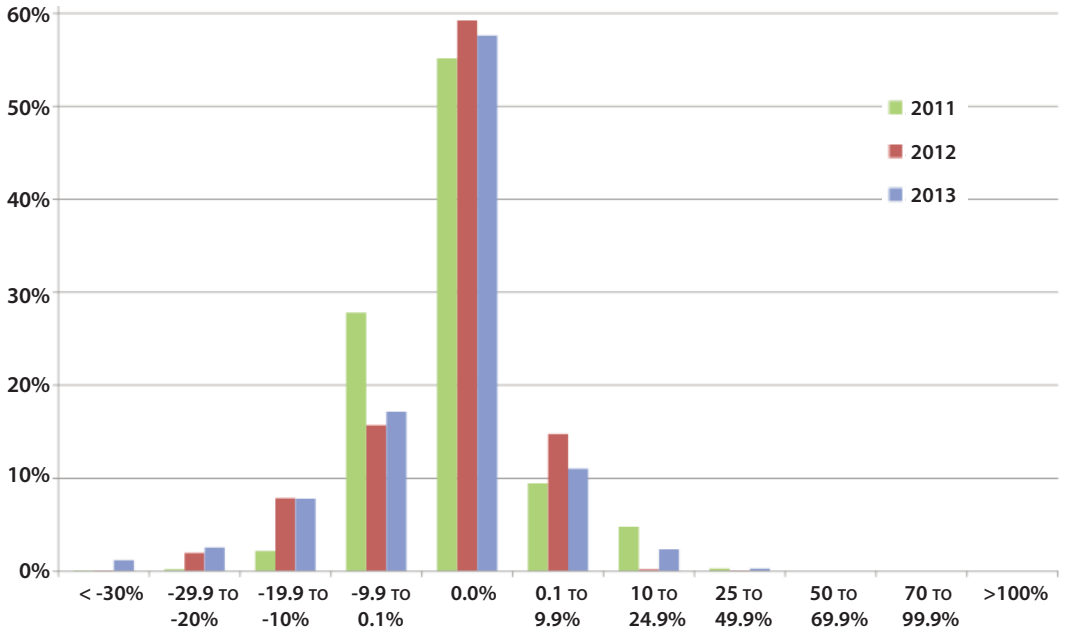


The fact is, people without health insurance still access the healthcare system when they become injured or seriously ill. So perhaps it will not be 50 million new patients, just 50 million patients who are now more likely to seek treatment for less-serious conditions, which have less chance of leading to life-changing medical treatment errors, and therefore less likely to result in MPL claims.

Several respondents to this year's Annual Rate Survey expressed concern over the potential impact of the ACA on the MPL industry. The general consensus appears to be that more procedures being done by fewer physicians cannot be a favorable environment for MPL.

Chart No. 3

Distribution of Rate Changes by Range (2011 - 2013))



Results from the Survey: the Numbers, Please ...

A majority of rates did not change at all in 2013 with 57.6 percent of all manual rates staying the same, a 1.6 percent decrease from the percentage that did not budge in 2012. As they have since 2006, rate declines significantly outnumbered, and were generally more severe, than rate increases as 28.8 percent of all manual rates decreased in 2013, a 3.1 percent rise from last year, while 13.7 percent were increases, slightly lower than last year's 15.1 percent.

For the eighth straight year, the great majority of increases were in the 0.1 to 9.9 percent range (11 percent), a decrease from the 14.8 percent of all increases that resided in that range last year, but 2.4 percent of rates increased in the 10 to 24.9 percent increase range, significantly higher than 2012's 0.2 percent rise. Just 0.3 percent of rates increased in the 25 to 49.9 percent range in 2013, only slightly different that last year's 0.1 percent.

As they have since 2006, rate declines significantly outnumbered, and were generally more severe, than rate increases as 28.8 percent of all manual rates decreased in 2013, a 3.1 percent rise from last year, while 13.7 percent were increases, slightly lower than last year's 15.1 percent.

To digest these numbers visually, Chart No. 1 (located on page three) shows the percentage of reported rate changes in the survey from 2004 through 2013 by range; Chart No. 2 (located on page four) shows the percentage of reported rate changes in the survey from 2003 through 2013; Chart No. 3 (located above) illustrates the distribution of rate changes for the years 2011 through 2013.

There was little change in the size and nature of rate changes regionally, although there were some anomalies worth pointing out. Pennsylvania saw the largest drop in the Northeast region, down 8.4 percent, despite the fact that the Patient Compensation Fund surcharge in that state was higher across the board. Nebraska and North Dakota's average rate level also declined noticeably in 2013—12.2 percent and 10 percent respectively.

On a regional basis, the Northeast was once again the only area of the U.S. to see an average increase in rates, but at 0.7 percent, it was lower than last year's 1.19 percent. New York led the pack in the Northeast this year with a 4.8 percent rise in rates, followed by New Hampshire, which had shown the second highest increase in 2012, with a rise in rates of 4.2 percent.

The only state besides Pennsylvania to show a decrease was New Jersey, down 0.8 percent. Connecticut, Massachusetts and Rhode Island showed no change, while Maine's rates increased 3 percent and Vermont's increased 3.1 percent.

The Western states experienced a 1.2 percent average rate drop, somewhat less than 2012's drop of 3.1 percent. Once again Utah led the field with a 5 percent drop, smaller than last year's 8.4 percent rate reduction. Alaska and Colorado were No. 2 and No. 3 this year with a 3.7 percent and 3.4 percent decrease in rates, respectively. Arizona, which came in second last year with 7.6 percent reduction, experienced flat rates in 2013. There were also no changes in Hawaii, Montana, New Mexico, Nevada, Washington and Wyoming. The other Western states showing average rate reductions in 2013 were California (3 percent) and Idaho (1.6 percent). Oregon was the only Western state to show an increase from 2012 (0.9 percent).

At 3.6 percent, the Midwest once again experienced the largest average rate decrease (the region had an almost identical 3.5 percent drop last year) and was once again the most volatile region.

Only three states (Iowa, Minnesota and Missouri) showed no average change up or down in rates. North Dakota and Nebraska, as noted above, had the steepest declines at 12.2 and 10 percent, respectively. Michigan took third place with a 5.1 percent drop, followed by Wisconsin and Indiana at 4.2 percent each. South Dakota's rates fell 3.35 percent, with the remaining states all coming in with rate declines less than two percent: Illinois (1.6 percent), Kansas (1.2 percent) and Ohio (1.6 percent). No state in the Midwest region showed an average rate increase over 2012.

The South, which had a miniscule 0.5 percent average decline last year, registered a slightly larger, but still small, 0.7 percent drop in 2013. Nine of the Southern states (Alabama, Arkansas, Delaware, Kentucky, Maryland, North Carolina, Oklahoma, Tennessee, Virginia) and the District of Columbia all showed no change in rates. Only West Virginia (1.3 percent) showed an average increase in rates this year. Florida, which experienced the largest reduction in rates last year at 4.5 percent, had a scant 0.7 percent drop this year. Other decreases occurred in Georgia (1.3 percent), Louisiana (2.6 percent), Mississippi (3.3 percent), South Carolina (0.7 percent) and Texas (with the largest decrease, 4.9 percent).

Change is definitely coming, and savvy MPL insurers will do well to stay abreast of all factors—large and small, butterfly or seagull—that could, or even might, have a significant impact on the sector's long-term financial weather report.

Noteworthy Responses from the 2013 Survey

As usual, the written responses to the survey exposed many of the issues insurers are most concerned about. Some of the most revealing, we believe, are included below.

Concern Over Competitor Tactics: More than one quarter of the respondents said they were concerned about their competitors' actions. Specific competitor actions cited included, "Ever increasing number of credits used, stacking of credits and multi-year rate guarantees that are leading to irresponsible pricing." A seemingly more frustrated tone could from a respondent who wrote that there "Seems to be no rhyme or reason, in some cases, for the pricing we are seeing."

Accountable Care Organizations: As we previously discussed, there has been a small but definite move into the ACO segment of the market by a few companies. The comments in response to a question about what the major underwriting considerations should be when assessing ACO risks were numerous and more detailed this year than in the past. This suggests companies are thinking more deeply about the risks posed by ACOs. Responses to this question included: "D&O/EPLI, errors and omissions liability, professional liability, general liability, cyber liability, capitation/stop-loss, crime, managed care"; "Structure, ownership, coverages desired and exposures to insure"; "The management and central controls exerted by the organization to reduce and mitigate claims" and "Having the ability to provide coverage for all of the exposure an ACO presents—PLI, D&O, Health, Stop Loss, etc."

How will Electronic Medical Records (EMRs) impact the cost of MPL?: Although 72 percent of respondents replied "No Change" or left the answer blank, this question did receive many comments. A sampling of those responses include: "We believe the implementation of EMR will be slow and that EMRs present their own inherent risks"; "We are going to still see claims with EMR, but they will hopefully be more defensible"; "Better documentation for plaintiffs' bar to bring suits"; "No proof that EMRs make any difference to medmal claims"; "Savings in one place create new courses of action in another"; "EMRs appear to impact productivity and have a large learning curve upon initial implementation which may impact patient care" and "It will take time for EMR to become a factor in ongoing litigation."

Market Consolidation: Just as it did last year, the issue of market consolidation elicited several comments, even though comments were not requested as part of this question, which was intended to elicit a simple "yes" or "no" answer.

This question also garnered the highest number of "yes" answers received by any question on the survey. Only one respondent answered "no," with one leaving the answer blank, for a very rare 92 percent "yes" response to the question of whether there will be additional consolidation in the MPL market. The following two responses reflect the majority: "Yes, there will most likely be additional company consolidations in the future" and "Yes, the continuing effort to reduce costs will lead to additional consolidation."

Conclusion

There are a number of issues—some obvious, some not so obvious—that will continue to impact the market over the next several years. While it is clear, in hindsight, that claim frequency declined significantly during the past decade, no one today knows when—or even if—it will begin to rise again.

Certainly, the industry's financial results have been aided by the significant reserve releases of late, but it is uncertain how much longer this will continue.

And while there are more physicians being employed by large healthcare organizations currently, what that might mean for the MPL insurance industry long-term is anything but obvious.

The difficulty inherent in predicting the future with pinpoint accuracy does not mean we should abandon our efforts to monitor key metrics of the MPL industry, spot trends and compute the likelihood of their various outcomes under different scenarios.

Closely monitoring these industry dynamics and forecasting the relative likelihood of various impacts, while difficult, is critical for the industry's continued financial success. If claim frequency is higher for the first six months of 2013, is that simply statistical noise? Or does it foreshadow something more adverse for the industry to manage?

No one can predict how these trends might affect the MPL market. But change is definitely coming, and savvy MPL insurers will do well to stay abreast of all factors—large and small, butterfly or seagull—that could, or even might, have a significant impact on the sector's long-term financial weather report.

Chad C. Karls is a Principal and Consulting Actuary at the Milwaukee office of Milliman, Inc., specializing in medical professional liability insurance. He served as guest editor for the 2008 Medical Liability Monitor Annual Rate Survey, and has done the same for every Annual Rate Survey since 2010.