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ANNUAL RATE SURVEY ISSUE

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METHODOLOGY

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

In this issue, we bring you our 25th *Annual Rate Survey*. This issue provides a continuing overview of changing rates for physicians' medical professional liability insurance. It is a snapshot in time, reporting rates effective July 1, 2015.

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, PLICO and Physicians' Reciprocal Insurers, all rates shown were volunteered by their respective companies. Those companies' rates published herein were obtained through

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A CHAIN REACTION

The Medical Professional Liability Insurance Industry Is Being Transformed by the Transformation of the Healthcare Delivery System. The Past Is No Longer Prologue to Longterm Success — Even Survival

by Paul Greve, JD, RPLU
and Susan Forray, FCAS, MAAA

Describing the 2015 market for medical professional liability (MPL) insurance—one seemingly stuck in neutral gear during recent years—without first covering old ground, can be a challenge. Last year we wrote about the "Slinky Effect" to describe the historical tendency of MPL rates to slowly and steadily decline during an extended period of time before reaching the point where they "snap back" as companies rapidly increase rates in response. The popular toy's snap-back metaphor is one form of a chain reaction.

This year, we want to continue the Slinky trope to describe the soft market, but also want to focus on the snap-back chain reaction that makes the Slinky somersault as a metaphor for the MPL industry's response to the broad effects of healthcare reform. Previously, the MPL industry could afford to be less attentive to changes in the healthcare delivery system because the business of healthcare and practice of medicine had been very stable during the course of recent decades, save for innovations in clinical practice that needed to be addressed from an underwriting perspective. That changed with the passage of the Patient Protection & Affordable Care Act of 2010, which created a chain reaction throughout the entire healthcare industry.

Market Shrinkage & Market Growth

The most obvious effect of healthcare reform on the U.S. MPL industry has been the declining numbers of physicians in private practice, but since the start of 2014, there appears to have been a marked deceleration in the purchase of specialty physician practices nationwide by hospitals and large health systems. Each market and region is unique, of course, but the deceleration of practice acquisitions has been influenced by a combination of factors that include:

- Hospitals and health systems having already acquired the specialty practices targeted or needed.
- Purchasing specialty practices is very capital-intensive.
- Joint ventures and contractual networks with physician partners and group partners can often be created at a much smaller expense.
- Physician productivity goals have not always been achieved, particularly in specialty practice.

There has been no slowing in the purchase of primary care practices or the employment of primary physicians after residency. Primary care physicians are still essential to the longterm success of hospitals and health systems because they are at the center of referral decisions to specialist physicians and facilities.

One trend that continues—and possibly has somewhat accelerated—is the movement of private practice physicians into larger groups. Larger physician groups that wish to remain independent of hospital employment generate larger MPL premiums, but their size also makes it much more feasible to

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move to an alternative risk transfer vehicle such as a captive insurance company or a risk retention group, thereby removing even more potential insureds from the MPL market and threatening market share.

At the same time, some hospitals have spun-off individual doctors and groups from employment in recent years. Usually this has been done due to a perceived lack of productivity, but it would be folly to expect that this will become a mega-trend and we will see a gradual return of the private practice model. The economics of private practice are usually cost-prohibitive, with both shrinking reimbursement and high overhead expenses—chiefly, and ironically, staff health insurance premiums and information technology investments, among others.

Many MPL insurers have a recent, or in many cases longer, history of insuring hospitals, particularly community and rural hospitals. Those hospitals have been, and are increasingly, the acquisition target of large regional healthcare systems. Declining government reimbursement—Medicare and Medicaid—as well as reduced payments from private health insurers have challenged their ability to survive as standalone facilities. Thusly, the solo physician and small physician group market has shrunk for MPL insurers. It has also shrunk for standalone hospitals.

Industry segments where there has been growth include aging services and longterm care, miscellaneous facilities (defined as any healthcare entity not acute care or longterm care, e.g. ambulatory surgery centers, imaging centers, hospice, dialysis, medi spas, home health, etc.) and allied health professionals (physician assistants, nurse practitioners and other physician extenders). Many MPL insurers now have the filings and forms to underwrite these classes of business, offering the ability to regain some of the premium lost to underwriting fewer physicians, groups and hospitals. This is a good example of the chain reaction healthcare reform has had on the MPL industry.

Significant Changes from Last Year's *Annual Rate Survey* Results

In addition to a shrinking traditional MPL market, insurers face competition from several new writers, adding even greater downward pressure on rates, prolonging the record-length soft market.

We see this in several ways when looking at the results of the 2015 Medical Liability Monitor *Annual Rate Survey*:

- More than half of respondents (52 percent) indicated they are concerned about underwriting guidelines used by competitors (up from 21 percent in 2014).
- Almost half (43 percent) of respondents stated that reinsurance costs have decreased in the past two years (up from 21 percent in 2014). Only one respondent indicated that reinsurance costs have increased this year.
- Almost one-third (29 percent) of

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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, 2015.

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 professional 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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respondents have increased their use of schedule credits in the past year (up from 16 percent in 2014), although no respondent introduced new credits (down from 21 percent in 2014).

• Most directly, 43 percent of respondents indicated that the market is becoming softer (up from 26 percent in 2014).

Respondents continue to observe that frequency has reached its nadir, with only 5 percent observing a decrease and the same number observing an increase this year. Last year's *Annual Rate Survey* results suggested that frequency may even be inching up, with not one respondent reporting a decrease in frequency and 11 percent experiencing an increase. Nonetheless, that pattern does not seem to have continued into 2015.

Chart No. 1

Overall Average Rate Change by Range

Range	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
> +100%	0.0%	0.6%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
+70.0 to +99%	0.0	0.6	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0
+50.0 to +69.9%	0.0	0.4	0.0	0.1	0.0	0.0	0.0	0.0	0.0	0.0
+25.0 to +49.9%	2.3	0.5	0.6	0.0	0.0	0.3	0.1	0.3	0.0	0.2
+10.0 to +24.9%	5.6	5.9	1.2	1.9	0.8	4.8	0.2	2.4	0.1	5.5
+0.1 to +9.9%	22.6	8.2	5.6	5.7	13.4	9.4	14.8	11.0	12.1	11.4
0.0%	46.6	53.1	49.9	54.2	67.0	55.1	59.2	57.6	65.0	71.1
-9.9 to -0.1%	15.1	21.0	20.8	22.1	14.9	27.8	15.7	17.2	16.9	9.5
-19.9 to -10.0%	5.1	6.5	15.6	12.0	3.6	2.2	7.9	7.8	2.2	1.1
-29.9 to -20.0%	1.3	2.3	5.2	3.7	0.3	0.2	2.0	2.6	1.1	0.9
< -30.0%	1.4	0.0	1.1	0.2	0.0	0.1	0.1	1.2	2.6	0.3

Chain Reaction & Creative Response

Despite the slow softening of the MPL market, the continued profitability of this line of insurance has allowed insurers to make creative use of their increased capital beyond expanding traditional underwriting of medical and healthcare professional liability. Many can now offer reinsurance for alternative risk transfer vehicles, such as captive insurance companies and risk retention groups. There has been growth in captive insurance companies and risk retention groups in recent years, and MPL insurers have much expertise they can provide to meet a need. Many now offer unbundled services such as claims, risk management, underwriting and fronting for captives.

We have seen MPL companies underwrite worker's compensation and lawyer's professional liability coverage. Cyber coverage is widely available, albeit at lower limits, but occasionally with an option to purchase higher limits. There have been other creative uses of capital, such as the purchase of non-MPL insurers (a biotech insurer), investment of capital in the London market and purchase of risk management as well as patient safety firms and other types of consulting firms.

While consolidation within the MPL industry has slowed in the last few years, it is ongoing. It may not always take the form of mergers and acquisitions, as evidenced by the very recent example of COPIC Insurance Co. and MagMutual Insurance Co. forming what they deem an alliance in the form of minority investment and reinsurance terms (See *MLM*, September 2015).

For the first time in eight years, the *Annual Rate Survey* indicates a slight increase in rates. While not materially different than last year's 1.5 percent average decrease, this year's 0.3 percent average increase nonetheless stands out for its reversal of direction.

Chain Reaction & Changed Risks

The pace of change is accelerating in the healthcare industry. Underwriting practices must adjust. It is not enough to simply review a traditional coverage application—even a renewal application—without understanding how the changing environment affects physician practice and facility risk. This is not an easy task given the uncertainty surrounding reform. Change has the potential to ameliorate risk in some ways, but increase it in others.

Claim frequency is at historically low levels and remains very stable. There is concern that higher patient volumes and increased patient expectations of the healthcare delivery system, coupled with patients paying more out-of-pocket for care, will drive more malpractice litigation.

Greater access to healthcare insurance, as well as an aging population, has resulted in an increased demand for services, causing a chain reaction where the U.S. healthcare delivery system is experiencing a shortage of physicians, both primary care and specialists, as well as an increased reliance on physician assistants and nurse practitioners to pick up the slack. Less time may be spent during patient encounters. There are mixed opinions on whether the higher volume of patients will lead to more malpractice litigation.

Telemedicine lets physicians and physician extenders interact remotely with patients in underserved areas and across state lines. Teleradiology has been around for quite some time. There is no doubt that telemedicine improves access to care, but will it increase medical liability exposure? To date, there have been few liability cases involving telemedicine.

The increasing use of cell phones, text messaging, e-mail and internet interactions with patients and other providers raises unique challenges for MPL insurers. So does the advent of the electronic medical

record (EMR). Many EMR systems purchased by hospitals are not perceived to be physician-friendly.

Some level of diagnostic error is inevitable. It will continue to be a challenge with new healthcare delivery models and settings, such as telemedicine and retail care, where healthcare is dispensed in big-box storefronts and chain pharmacies, for example. It may also improve with the application of new technologies, including EMR and telemedicine.

A greater emphasis on quality and coordinated care as reimbursement shifts from volume-based to value-based care may increase the risk that patients will fall through the cracks as they are moved throughout a large healthcare system. Currently, the healthcare delivery system remains siloed, but that will change in the years ahead. Payers and patients will expect care to be more coordinated than it is today. Failure to perform may result in reduced reimbursement, but also contribute to potential causes of litigation.

Reimbursement will continue to shift to volume-based payments in the form of capitation (payment per member, per month) as well as bundled payments (defined amounts for specific episodes of care, like coronary bypass surgery or hip replacement surgery). These trends could create the argument by plaintiffs that quality of care was compromised in the interest of cost efficiency.

A greater emphasis on preventive care will attempt to reduce the enormous cost of treating chronic diseases, such as obesity and diabetes. Patients will be required to assume more responsibility for their own care. In certain cases, noncompliant behavior could create a viable defense to malpractice litigation.

Clinical integration is occurring through the creation of care networks by contract or new corporate structures. These can take the form of joint ventures, affiliations, partnerships, accountable care organizations (ACOs), clinically integrated networks or organizations (CINs and CIOs). The myriad of possible structures creates potential contractual liability, negligent credentialing liability and ostensible agency liability.

Survey Says...

For the first time in eight years, the *Annual Rate Survey* indicates a slight increase in rates. While not materially different than last year's 1.5-percent-average decrease, this year's 0.3-percent-average increase nonetheless stands out for its reversal of direction. Driven both by more insurers increasing rates (17 percent in 2014 versus 12 percent in 2013) as well as holding the line (71 percent in 2014 versus 65 percent in 2013), the shift appears as a fairly consistent pattern across rate change bands.

Internists and OB/Gyns both saw manual rate increases of about half a percent (0.6 percent and 0.5 percent, respectively). General surgeons saw an average manual rate decrease of 0.2 percent, stemming in part from a large insurer that appears to be reducing its specialty relativity for these insureds. The distinction between specialties may be in part a matter of timing, as last year's survey showed slightly larger rate decreases for internists and OB/Gyns than general surgeons, offsetting this year's differences between specialties.

For the first year since 2006, insurers reported more rate increases than decreases in this year's survey. The difference in numbers remains small, with 17 percent reporting increases and 12 percent reporting decreases. Nonetheless, the change demonstrates a consistent shift across insurers from last year, when only 12 percent reported increases and 23 percent reported decreases.

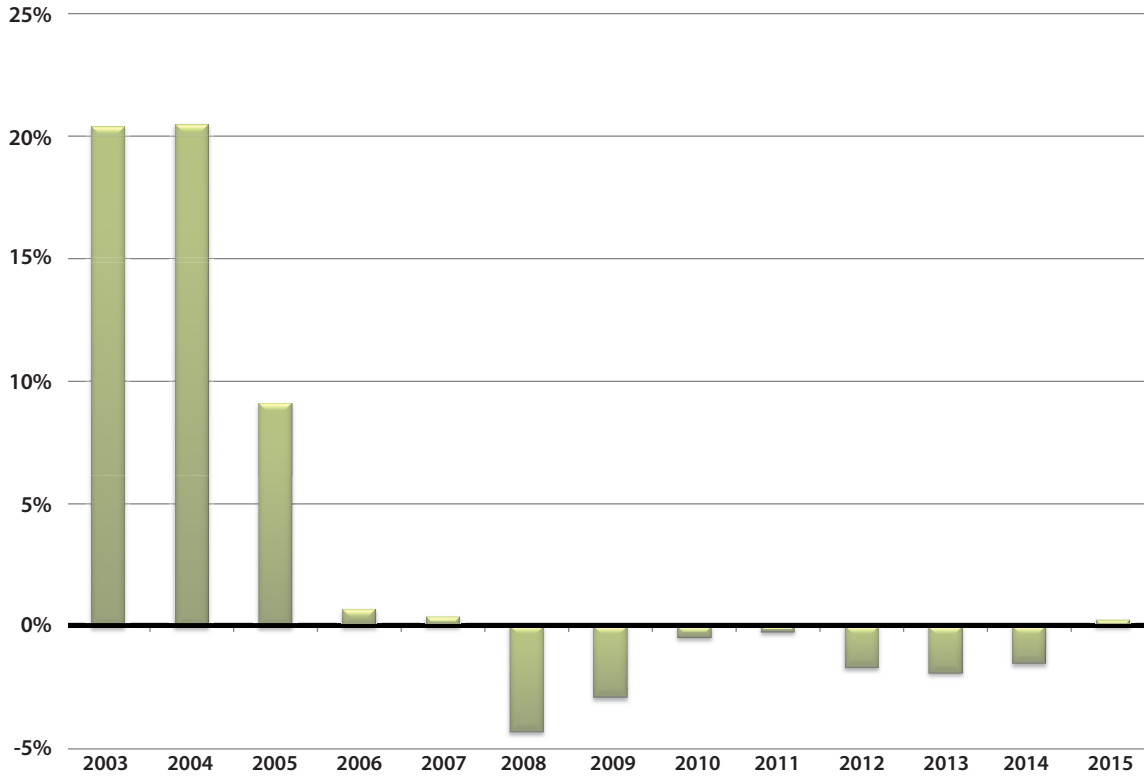
The double-digit rate decreases occasionally seen in recent years were manifest in only one state within this year's survey—Iowa, with a rate decrease of 11 percent. This decrease was driven by a single, smaller insurer in the state that appears to be decreasing its rates to be in line with the larger competition. Most rate increases also seemed to follow this same pattern; that is, they were generally exhibited by smaller insurers increasing rates to be in line with the larger competition.

Overall, the vast majority of rates did not change up or down in the 2015 survey. Seventy-one percent of all manual rates stayed the same, a six-point increase from the percentage that did not budge in 2014, and 13 points above 2013.

For the eleventh-straight year, most increases were in the 0.1 to 9.9 percent range (11.4 of 17.1 percent increasing), a decline in the share of increases in that range last year (12.1 of 12.2 percent increasing). More than 5 percent of rate increases exceeded 10 percent, compared to a scant 0.1 percent of rate increases in excess of 10 percent a year

Chart No. 2

Overall Average Rate Change (2003 - 2015)



ago. Similarly, none of last-year's rate increases exceeded 15 percent, whereas this year 4 percent of rate changes fell in this range.

Regionally, rate increases dominated in the South, while the other three regions (Northeast, West and Midwest) continued to show average rate decreases. On average, the South showed a rate increase of 0.9 percent, in contrast to its 0.7-percent decrease in the prior survey. Georgia, North Carolina and Texas all showed rate increases in excess of 5 percent. Lesser rate increases were seen in Kentucky, Oklahoma and Virginia, with rate decreases in Florida, Louisiana, Mississippi and West Virginia. Texas is particularly noteworthy, as it has exhibited the largest rate decrease in the South for several years. This year's rate increase of 6.7 percent stands in noticeable contrast.

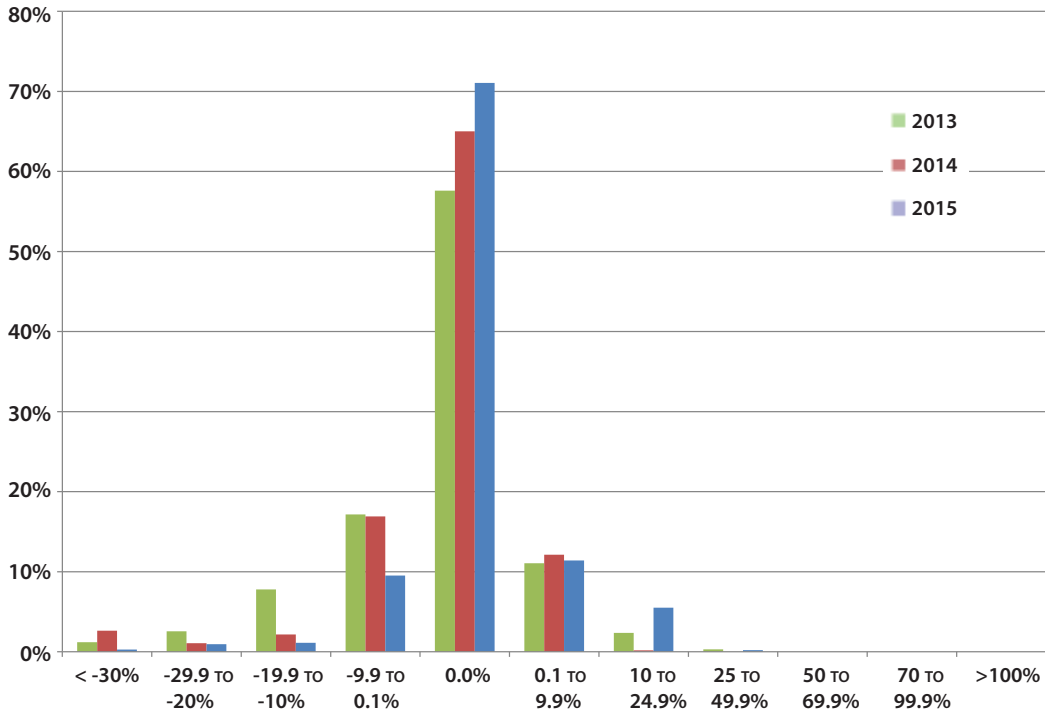
The Midwest showed the largest average rate decrease of all the regions with a 0.8-percent decline, similar to last year's 0.7-percent decrease. This was primarily driven by the 11-percent decrease in Iowa, noted previously. Showing low-single-digit rate declines were Illinois, Kansas and Missouri. Showing low-single-digit increases were Indiana, Michigan, Ohio and Wisconsin. The remaining states—Minnesota, Nebraska, North Dakota and South Dakota—all maintained the prior year's rate levels.

Western states experienced a 0.2-percent average rate decrease, noticeably less than the 4.1-percent drop recorded in 2014. The West is distinguished this year by having the most states with no rate changes; seven of the 13 states in this region maintained last year's rates. The overall average decline was driven by just three states—Hawaii at 5 percent, Alaska at 2.9 percent and Arizona at 0.2 percent. Only three states in the West showed rate increases—New Mexico at 2.5 percent, Oregon at 1.7 percent and Idaho at 1 percent.

Lastly, while rates in the Northeast showed only a 0.1-percent decrease on average, only two states in this region—New York and Connecticut—maintained the prior year's manual rates. The remaining states were wideranging in their experience—from Rhode Island's 7-percent increase to Pennsylvania's 7.6-percent decrease. In between saw two increases—Maine at 2.5 percent and Massachusetts at 3.1 percent—and three decreases—New Hampshire at 0.8 percent, New Jersey at 3.3 percent and Vermont at 1.8 percent.

Chart No. 3

Distribution of Rate Changes by Range (2013 - 2015)



So long as calendar-year reserve releases continue to buoy the MPL industry's financial results, one can expect continued slow and steady weakening in rate levels. The financial pressure necessary to provide upward pressure on rates remains absent in the current market.

Other Market Segments

All market segments remain competitive in 2015. This year we are including brief commentary on each, including: hospitals and health systems, aging services and longterm care facilities, miscellaneous facilities, managed care organizations and health plans as well as allied health professionals.

• ***Hospitals & Health Systems.*** The hospital and health systems market segment is very competitive in 2015—with three new entrants during the last year. Thus there is a huge amount of capital chasing a smaller pool of insureds, as is also true for physicians and surgeons. The domestic insurers have been more price-competitive than the London and Bermuda markets during recent years, but the latter continue to play an important role, especially in filling out layers within many programs. Renewal pricing ranges from flat to low-double-digit decreases, depending on account-specific loss experience, exposure growth and territory.

• ***Aging Services & Longterm Care Facilities.*** There is plenty of capacity in the aging services and longterm-care facility market segments, in stark contrast to the last MPL crisis. Just as with hospitals and health systems, there is more consolidation occurring within the industry, but new properties are being built to address the demographics of an aging population. Pricing at renewal very much depends on the jurisdiction and the legal trends within it. There are certain states and regions where rates are notably higher due to large verdicts than the typical flat to 5-percent increases, which has caused a few insurers to withdraw. Accounts with less-than-average loss experience are also experiencing notable increases in quoted premium.

• ***Miscellaneous Facilities.*** The miscellaneous facilities segment has

become perhaps the most competitive within MPL. There is substantial capacity and significant growth in the creation of these types of entities with the advent of healthcare reform and the shift to less-expensive outpatient care. Insureds are experiencing flat to 10-percent decreases at renewals.

• ***Managed Care Organizations & Health Plans.*** The managed care and health plan segment is the smallest within the MPL line of insurance. However, it is growing noticeably, stemming from the creation of health insurance exchanges, clinically integrated networks and organizations, provider-sponsored health plans and accountable care organizations. This growth is observable despite the recent consolidation among some of the largest health insurers.

• ***Allied Health Professionals.*** This is a competitive segment with plenty of capacity. Rates are quite low and have been for more than a decade. In the era of healthcare reform, the allied health professions are thriving. Physician assistants, nurse practitioners, physical and occupational therapists, home health and visiting nurses, home health aides, various types of technicians and other types of allied health professionals are in high demand. They are especially valued for helping provide primary care because of the current physician shortage that is expected to continue into the foreseeable future. Rates are flat and generally range from $1,500 to $3,000, depending on the area of specialty.

Noteworthy Responses from the Survey

Insurers continue to express concern about various issues, including market consolidation, increased broker commissions, challenges to tort reform and competitors who may be driving down rates to unsustainable levels in an attempt to increase or maintain share in a shrinking market. Concerns about the soft market, in particular, continue to grow:

• "There appears to be a race to the bottom, even among 'responsible' insurers, with each one requiring less and less information in order to quote or bind coverage," wrote one respondent. This concern was echoed by several insurers, who cited the "relaxing or elimination of application requirements" and a "willingness to quote with limited information" in characterizing the competition."

• "Pricing is getting more competitive," wrote a respondent. "We are expecting to issue 'A'-rated paper at 'B'- or 'C'-rated pricing."

• "Quite a few of our competitors are writing coverage on physicians in the standard market at preferred rates, who previously would have been debited, if not surcharged."

• "The competitive landscape has seen premiums drop and insurers are not underwriting as strictly in order to capture new premium."

• One insurer cited the "expansion of terms and conditions, such as accelerated vesting of retirement tail-coverage, reduced or waived charges for prior-acts exposure, increased aggregate limits and other policy wording enhancements at no charge" as examples of the phenomena seen in the current soft market. Although this does not yet seem to be a concern in all markets, we will watch this development with interest as a continued indication that rate adequacy has not reached its lowest level in the current soft market, regardless of current manual rate changes.

• In a new question on this year's survey, 14 percent of insurers observed that competitors have increased their occurrence-coverage offerings during the past 24 months, although only 5 percent of insurers identified themselves as having made such an increase.

• When asked about the principal threats to market share, insurers identified "irresponsible competitors," "unsustainable premium quotes from competitors" and "insurers looking to grow their top line," among other factors.

While concerns about the soft market are widespread, insurers more frequently identified healthcare consolidation as the most significant threat to market share. Fully 65 percent of respondents cited consolidation of healthcare practices as the biggest, or one of the biggest, threat to their market share. While insurers are concerned with the acquisition of their insured practices by self-insured healthcare systems, they verbalized no concern about insured groups or hospitals forming their own self-insurance vehicles absent consolidation. The soft market and large number of practices acquired to date have largely eliminated this issue.

Concerning the continued implementation of the Affordable Care Act, most respondents continue to believe that it is too early to assess the legislation's impact on claim frequency or severity. Those who expressed an opinion generally echoed the sentiment presented by the respondent who wrote, "More patients with access to regular healthcare, with a relatively constant supply of physicians (in the short run), will lead to greater patient frustration and dissatisfaction with waiting times and appointments."

Conclusion

In its most recent *Review & Preview* report, A.M. Best estimated a net reserve redundancy of $3.4 billion for the MPL industry as a whole. Taking this estimate relative to the industry's recent reserve releases suggests that there is another two to two-and-a-half years of reserve releases at the same level as has been released of late. This implied time period would be extended if the reserve releases are proportionally reduced as the perceived overall redundancy begins to wane. Further, if the industry continues to release reserves beyond the point at which reserve levels are later deemed precisely adequate—as has been the P&C industry's history—that, too, would extend the time period of expected reserve releases implied by A.M. Best's estimate, likely by another two to three years.

So long as calendar-year reserve releases continue to buoy the MPL industry's financial results, one can expect continued, slow-and-steady weakening in rate levels. While insurers have expressed some concern with the loosening of coverage terms and underwriting standards in various markets and among certain competitors, these phenomena are not universal. The financial pressure necessary to provide upward pressure on rates remains absent in the current market.

While the Slinky continues to be slowly stretched, the pressure required for the Slinky to bounce rapidly back is not yet here. Several years remain during which the Slinky can be metaphorically stretched—with rate levels and adequacy slowly continuing to fall. Inevitably we will then revert from a soft to hard market, but only time will tell whether that reversion will be as prolonged as the current protracted soft market, or whether we will bounce back with the speed of the proverbial Slinky.

The (chain) reaction of the MPL industry to the effects of healthcare reform are to be applauded. They have quickly and appropriately expanded products and services to meet the needs of both traditional and new buyers.

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