

 **The Impact of Health Care Reform on the Medical Professional Liability Market**

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Vice President

 CAMAR Spring 2011 Meeting, Malvern, PA, June 2, 2011

 **Outline of CAMAR Presentation June 2, 2011**

Overview of Recent Trends


- ◆ Profitability Has Been Outstanding ... and Unsustainable


How Will Health Care Reform Affect Medical Professional Insurers?

- ◆ The Impact of Health Care Reform on Loss Exposure
- ◆ Growth Opportunities Shift Under Reform Initiatives


Recommendations for Company Outperformance

- ◆ New Risk Management Focus
- ◆ Conclusions and Outlook

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 **Initial View on Passage of Health Care Reform**

A study published October of 2010 by the Medical Liability Monitor showed that 69% of companies surveyed DID NOT believe health care reform will increase claims frequency or severity.

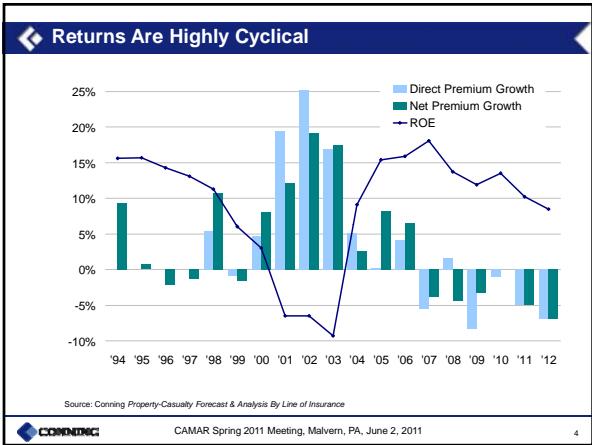
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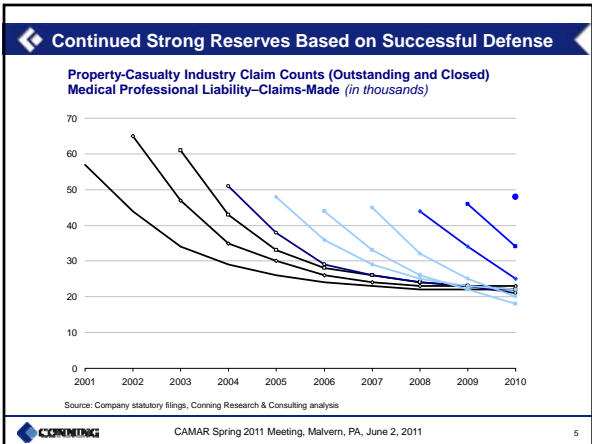
Historical Results and Conning Forecasts

Year	Net Premiums Written	Loss/LAE Ratio	Expense Ratio	Combined Ratio
2003	\$8,753	121.8%	17.0%	139.1%
2004	8,991	93.4%	15.4%	109.2%
2005	9,730	82.8%	17.3%	100.6%
2006	10,366	71.7%	17.7%	90.6%
2007	9,957	62.9%	19.0%	84.8%
2008	9,521	57.4%	19.3%	79.2%
2009	9,525	61.9%	21.3%	85.6%
2010P	9,206	58.0%	22.0%	82.5%
2011F	8,746	66.0%	22.0%	89.0%
2012F	8,134	72.0%	22.5%	95.5%
2013F	7,564	76.0%	22.5%	99.5%

(\$ in millions)
Source: Conning Property-Casualty Forecast & Analysis By Line of Insurance

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◀ Past Drivers of Positive Results Are Largely Behind

- ◆ Positive state tort reform over the past decade
- ◆ Higher earned premium (growing 10% per year from 2000 to 2006)
- ◆ The use of doctor directed risk mitigation practices
- ◆ Better claims defense with expert witnesses



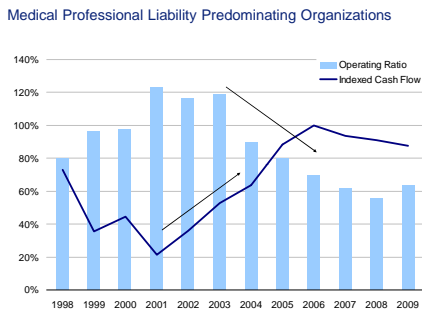
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◀ Underwriting Cash Flow as a Leading Indicator

Underwriting cash flow was a leading indicator of profitability in 2002.

Cash flow strength peaked in 2006. Although it remains relatively healthy, it is on a downward trend.



Source: A. M. Best, Comring Research & Consulting analysis



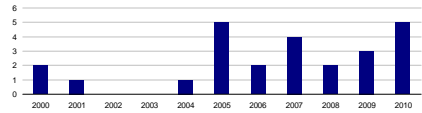
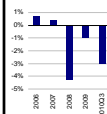
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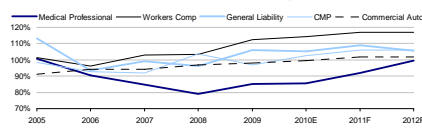
◀ Competitive Environment Heats Up

M&A Transactions Affecting Medical Professional Insurance

Premium Rates



Historical and Forecast Combined Ratios by Line

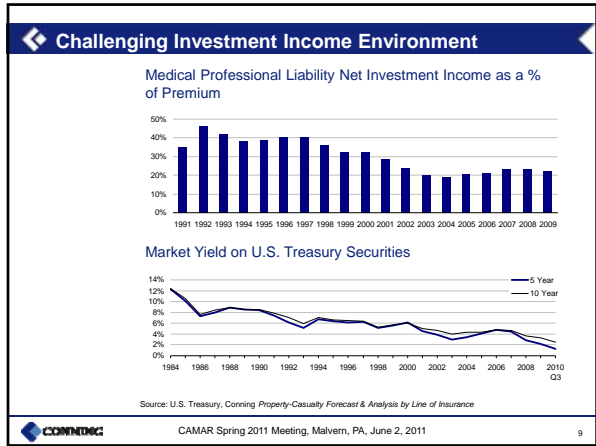


Sources: Council of Insurance Agents & Brokers, Comring proprietary database, Comring Property-Casualty Forecast & Analysis by Line of Insurance



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Signs of Erosion in Tort Reform

States Reporting Erosion of Tort Reform

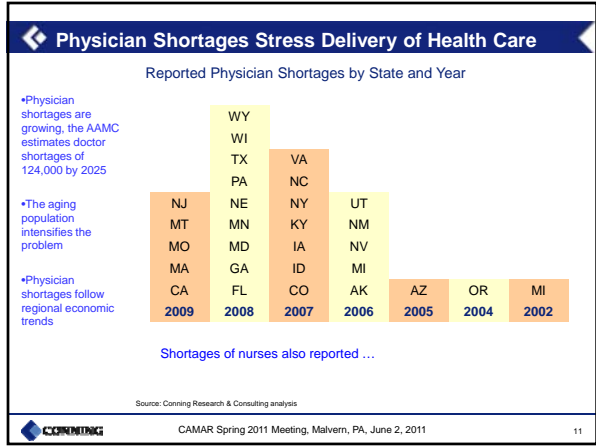
Erosion of tort reform laws include:

- extending filing periods to report a claim
- increasing noneconomic damage limits for "special cases"

Challenges to tort reform	Reversals of tort reform measures	Overturn of noneconomic damage caps
Texas	Wisconsin	Illinois in 2010
California	Washington	Georgia in 2010
Wisconsin	Oregon	
Michigan	Missouri	
Washington	Illinois	
Nevada	Georgia	
Oregon		
Missouri		
Illinois		
Georgia		
Maryland		

Source: Business Insurance, various

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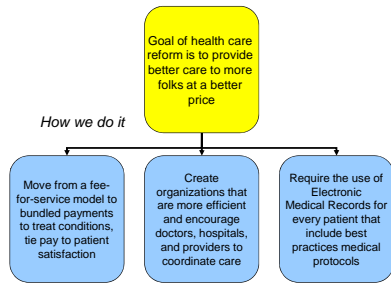


Reasons to Worry About Physician Shortages

- ◆ Overworked physicians are more prone to error, lower reimbursements forcing doctors to see more not fewer patients
- ◆ Several studies link medical liability claims frequency to time a doctor spends with a patient
- ◆ Overworked doctors will need to rely more heavily on nurse practitioners and other resources to provide care



Health Care Reform Initiatives – a Snapshot



...and add 32 million to ranks of insured in 2014!!!



Health Care Reform Initiatives Influence Liability Exposure

1. Shifting more care and higher acuity care to nurse practitioners and other mid-level care providers
2. Ease of access to more complete electronic medical records
3. Challenges to and changes in the quality of care



Expanding the Role of Practitioners Under Reform

- ◆ CareFirst BlueCross BlueShield of Maryland announced that it will start letting nurse practitioners participate in its health care provider networks as independent primary care providers, **citing growth of insureds under health care reform as the reason**
- ◆ Montana allows nurse practitioners to work without any doctor supervision
- ◆ 28 states are debating further loosening of restrictions that prevent nurse practitioners and physician assistants from performing more tasks independently



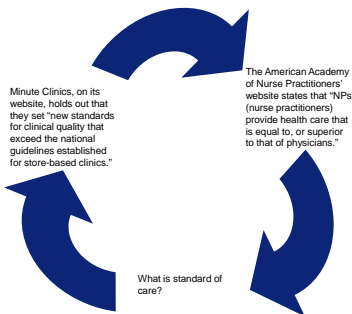
Blurring the Line of Providers

- ◆ Federal funding programs support advanced degrees for nurses
- ◆ National enrollment of nurse doctorates – from 70 in 2002 to 5,000 in 2009
- ◆ States push against AMA to allow nurses to use the “Doctor” preface

...An expanded role of mid-level care providers raises exposure



What Is the Standard of Care for Independent Nurses?



◀ The Challenge of Pricing Nurse Practitioners

- ◆ Most policies written on an occurrence form
- ◆ Auditing nurse practitioners is not an easy task
- ◆ Raising rates or changing to a claims-made form in a competitive environment?

◀ Nurse Practitioners and Beyond ... the "Scope Creep"

- ◆ Some medical schools are implementing three-year degree programs
- ◆ Lake Erie College of Osteopathic Medicine in New York, the University of Calgary and McMaster University in Ontario, Canada and Texas Tech
- ◆ Creating facilities where clinical care is available by telephone or through virtual offices
- ◆ Will the U.S. adopt an expanded role for pharmacists?

◀ Electronic Medical Records Required

- ◆ Electronic medical records (EMRs) are required for every patient under the new health care reform law
- ◆ An August 2010 American Hospital Association poll of 3,100 members showed that only 12% use EMRs
- ◆ EMRs will use protocols/ electronic prompts to ensure best practices
- ◆ EMR's will allow doctors, patients, and nurses to transfer more complete medical records/ history quickly and efficiently

Risks of EMRs

- ◆ *What if an electronic medical protocol is ignored by a doctor because he/she thinks it doesn't apply?*
- ◆ **Medical protocols - the standard of care? One size fits all?**
- ◆ **Other risks with EMR:**
 - ◇ Is redundant testing really redundant?
 - ◇ Time
 - ◇ Input errors
 - ◇ Software errors
 - ◇ Coding errors
 - ◇ AND E-Discovery!

Increased Exposure to E-Discovery from EMRs

- ◆ Lawyers will have greater and easier access to more
- ◆ Two federal organizations now have "blue button" technology on their websites, with the Department of Veteran Affairs offering complete, real-time medical records for its patients
- ◆ Expect plaintiff lawyers to data mine EMR's & metadata
- ◆ Easier access to claims data is likely to raise claims frequency, defense costs

What Happens to Quality of Care Under Reform?

Does the quality of care decline if...

More nurse practitioners provide higher level care?

Doctors are financially incented to provide more cost effective care?

Does the standard of care remain high?

Will it be impacted by new federal reimbursements?

Will it be defined by medical protocols in EMRs?

Is the standard that nurses provide the same as a doctor?

Does Establishing Malpractice Become Easier?

- ◆ If quality of care declines but current higher standards of care remain, does establishing negligence become easier?

The New York Times article notes that cancer care in the U.S. costs \$100 billion a year

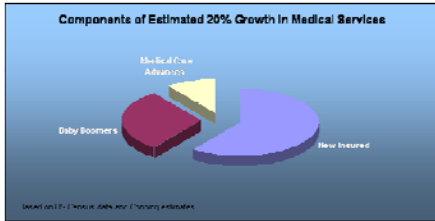
Example: A New York Times article from October of 2010 focuses on how five oncology practices are testing reducing costs for cancer treatments. The physicians in the test practices are motivated by fees that "encourage doctors to follow standard treatments rather than opting for individualized and unproven courses of therapy, which can often include expensive drug treatments."

OPINION: Legal opinion from risk managers at Stevens & Lee is that, as more doctors, hospitals, and health care organizations are compensated this way under health care reform, medical best practices will shift.



Growth Outlook for Medical Services

We estimate that the overall growth in medical services will likely be near 20% over the next five to ten years.



Reform Drives Growth in New Efficient Health Care Models

- ◆ **Accountable Care Organizations: the new delivery of care?**
 - A concept to managing the whole patient, by providing one primary care physician to oversee the needs of patients within a community of providers. Test models are in the works, focusing initially on coordinated care for chronically ill patients. Within the category of ACOs, the Patient-Centered Medical Home is seen as the most promising delivery model.
- ◆ **Retail Stores, Even Truck Stops, Supplying Clinical Care**
 - Walk into a CVS and get a physical? Have you been to a CVS MinuteClinic yet? How about Target and Wal-Mart? The Convenient Care Association counts approximately 1,200 retail clinics in 32 states, and the figure is expected to triple by 2015.
- ◆ **The Medical Hotel**
 - With overcrowding of hospitals in certain markets, there is a growing necessity to serve high-acuity patients for shorter stays. Currently, new medical hotels are being built near targeted hospitals to take some of the burden.



◀ The New Efficient Health Care Models (continued)

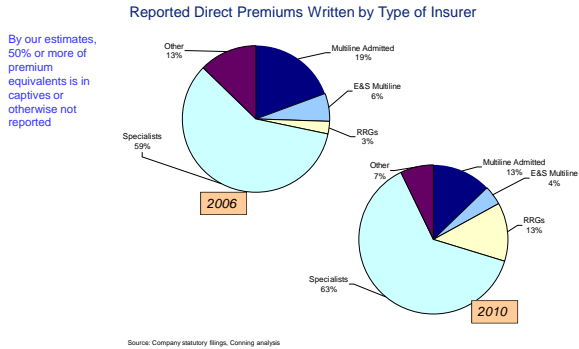
- ◆ **Workplace-Based Care**
 - ◊ Pitney Bowes and Quad Graphics are examples of companies that have set up a limited medical provider network. Some provide coordinated care as an extension to primary doctors; others provide full primary care and coordinate with hospitals and specialists.
- ◆ **Remote Patient Monitoring**
 - ◊ The Center for Technology and Aging in California cites that better technology and patient interest in staying home is driving a market for remote patient monitoring, allowing for quality care without office visits or outpatient care facilities.

Growth in hospital care (while increasing) will be slower than growth in outpatient and clinical care facilities due to the relative cost benefits of moving lower-acuity care out of hospital and emergency room settings (the Bureau of Labor Statistics)

◀ Growth Opportunities Shift Under Reform Initiatives

- ◆ Exposure is expected to increase as physicians consolidate with larger health care organizations
 - ◊ Increased severity and complexity of enterprise risks
 - ◊ Potential increased exposure with EMR technology
- ◆ The primary market for smaller physician group practices is shrinking
 - ◊ Smaller physician-owned practices merging with hospitals and now ACOs and larger health organizations continues under reform
- ◆ The market for more affordable and more efficient health care providers is expanding, creating growth opportunities
 - ◊ Retail health clinics, outpatient facilities, and remote care monitoring

◀ Will Specialist Companies and RRGs Continue to Expand?



Financial Advantages of Alternatives

Advantages: (Hope and Change)

- ◆ (Perception of) preferred risk pools, peer group selection
- ◆ Tax benefits if in a captive (deductibility of premium or incurred loss vs. paid loss)
- ◆ Flexible capital and funding rules
- ◆ Flexible coverage and policy forms/ ability to include broader risks
- ◆ Reduced regulatory requirements



Financial Disadvantages of Alternatives

Disadvantages: (Unintended Consequences)

- ◆ Accessibility in some cases
- ◆ Greater risk with lower capitalization
- ◆ Exit strategy unclear and perilous
- ◆ Start-up costs—necessary scale of operations
- ◆ Demands on board and management—skills and resource drain



Multilines Dominate the Top Profitability Quartile

Multiline insurers are only 17% of the top 200 companies, but represent 30% of the top quartile performers

- ◆ Multiline insurers now have an important and dominant role in the pricing and availability of coverage
- ◆ The top-tier multilines tend to outperform in terms of profitability and have the flexibility to move in and out of markets

Medical Professional Liability Quartile Analysis
Industry Results Combined for 2008 and 2009, Sorted by Profitability
(\$ in millions)

Quartile	Net Premiums Written	Net Premiums Earned	Incurred Losses	Expenses	Incurred Loss Ratio	Expense Ratio	Dividend Ratio	Combined Ratio	% of Multiline Cos.
Quartile 1	\$4,279	\$4,362	\$1,495	\$795	34%	19%	1%	53%	30%
Quartile 2	5,188	5,247	2,827	1,003	54%	19%	3%	77%	10%
Quartile 3	7,080	7,108	4,977	1,856	70%	21%	3%	94%	18%
Quartile 4	1,742	1,738	1,639	422	94%	24%	1%	119%	12%
Range					60 pts.	6 pts.	2 pts.	66 pts.	

Source: Company statutory filings, Corning Research & Consulting analysis



Qualities of Best-Performing Multilines

Attributes of Best Multilines:

•A core portion of the business is excess coverage over self-insured hospitals, doctors, and health care organizations

•Nearly all of the companies are publicly traded

•The larger multiline companies leverage their intellectual and monetary capital strength to support the self-insured and specialty marketplace

Best-Performing Multiline Insurers, 2008-2009
(in \$ billions)

Company	Net Premiums Written, 2008 & 2009 Combined
AIG	\$906,365
MetLife	237,705
W. R. Berkley	203,706
Zurich	223,025
OneBeacon	208,310
TIG	148,984
Allied World	147,391
ACE USA	143,926
Allghany	110,211
Arch Capital	22,926
Meadowbrook	20,272
Western World	12,859
Pharmacia Mutual	10,830
HCC	6,127
Farmers	5,633
State Farm	4,438
Chubb	3,016
Total Above Companies	\$2,416,145

Source: Company statutory filings, Corning Research & Consulting analysis

Best Positioned Insurers Offer an Enterprise Focus

- ◆ Insurance companies may need to bring a more successful value proposition
 - MDAverage announced it will offer coverage for employment practices liability, privacy and data security, and medical practice administration at no extra charge
 - The Doctors' Company and Chubb have announced free products to cover cyber risks
- ◆ New policies bundle more competitive products and services (including new risk management)
- ◆ Some M&A driven by hunger for product diversification


Success of Health Care Reform Tied to Economics

- ◆ Massachusetts enacted reform in 2006, and showed growing physician shortages in lower economic urban and rural markets
- ◆ Reform initiatives have a better chance of success in more affluent regions where coordination of care, patient accountability, and supply of high quality physicians/ nurses is greatest
- ◆ More challenging regions need to be identified and monitored

◀ New Strategies for Company Outperformance


Refocus Risk Management Practices:

1. Focus risk management on mid-level care providers (nurses, clinicians, and practitioners), train in proper use of EMRs and in how to improve patient relationships
2. Audit the EMR
3. Educate and defend against new legal discovery trends
4. Question/monitor quality of care and expected standards of care in all settings

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◀ New Strategies for Company Outperformance (Continued)

- ◆ Accounting for mid level care providers
- ◆ Consider investments in technology that coincide with new available data
- ◆ Monitor exposure of new efficient medical care facilities
- ◆ Promote patient accountability to shift responsibility and liability

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◀ Conclusions and Outlook

- ◆ Near-term challenges
 - ◊ Competitive environment
 - ◊ Erosion of tort reform
 - ◊ Lower investment yields
- ◆ Longer-term challenges with health care reform
 - ◊ Use of EMR / New electronic discovery
 - ◊ Physician shortages, increasing use of nurse practitioners, further scope creep in providers
 - ◊ Potential impact on quality of care
- ◆ But a path exists for better-informed companies to grow and improve profitability ...

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◀ The Opportunities to Grow and Improve Profitability ▶

- ◆ The delivery of health care is poised for change
- ◆ We expect this to change the way medical professional liability insurance companies view and manage risk, defend claims, manage data, price policies, choose markets, and expand
- ◆ Within this landscape of change, there is a developing path for profitable growth
- ◆ That path varies based on each insurer's understanding of the new health care environment in relation to core competencies and the ability to reinvent itself



◀ Q & A? ▶



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