Medical Professional Liability Updates and Innovations

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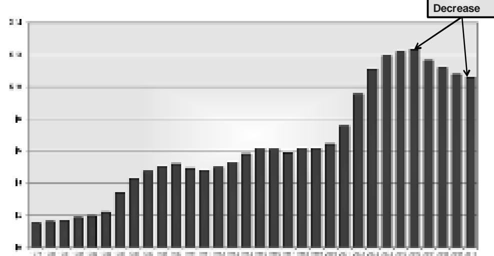
Overview

- Recent Financial Results
- Dynamic Changes In Healthcare
- Impact on MPL Insurance
- Per Patient Visit Coverage
  - Rating of per patient visit coverage

Recent Financial Results

Growth in Direct Written MPL Premium – National Statutory Market
($Billions)

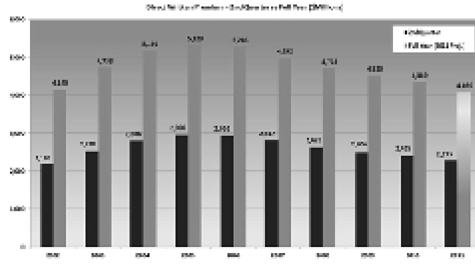
14% Decrease



Sources: Milliman analysis of A.M. Best Aggregates & Averages – P/C
Milliman analysis of National Underwriter Insurance Data Services from Highline Data

Recent Financial Results

Composite of 47 MPL Specialty Writers



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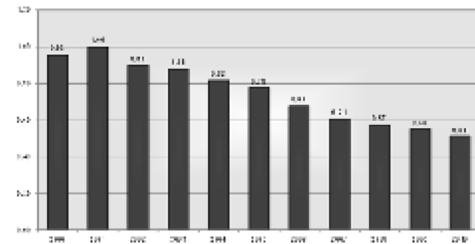
Closed Claim Frequency per Physician

Countrywide, Base Year 2001



Sources: Milliman analysis of AMA Physician Characteristics and Distribution in the U.S., multiple editions
Milliman analysis of National Practitioner Data Bank Public Use Data File, December 31, 2010
2010 exposure estimated

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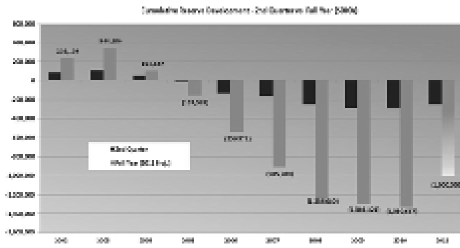

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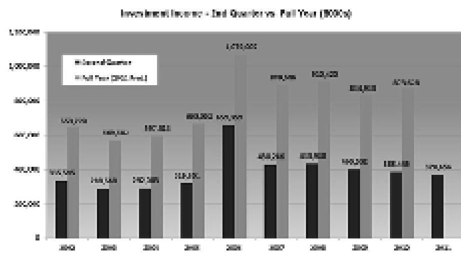

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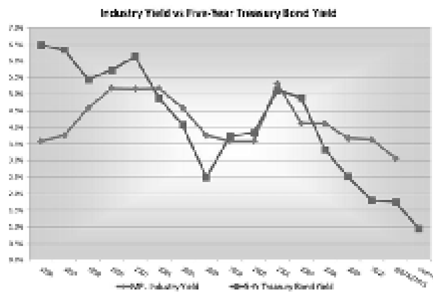

Dynamic Changes In Healthcare

- Patient Protection and Affordable Care Act (PPACA)
- Delivery of Healthcare
  - Accountable care organizations
  - Physician shortage and practice pressures
    - Independent physician to employed physician

Patient Protection and Affordable Care Act

- New acronyms: Recycled concepts
- More primary care providers will be needed
- Reimbursements are not keeping pace
- A lot of physicians are retiring
- M&A is on the upswing

Accountable Care Organizations

- The GOAL
  - Encourage integration
  - Reduce waste
  - Prevent needless expenditures
  - Lead to better outcomes
- These expectations may have unintended consequences

ACO's May Increase Malpractice Risk

- Individualized care plans may increase the duty owed
- Standards of care may rise
- Reducing "unnecessary" procedure by $$ incentive may lead to new theories of negligence
- "Patient engagement" may make obtaining informed consent more difficult

ACO's *cont'd*

- ACO's may increase malpractice risk
  - Vicarious liability for the ACO may increase as it markets itself as a "fully integrated system"
  - Proposed ACO regulations rely heavily on medical integration through technology and effective coordination
  - New risk transfer models may still leave practitioners at risk

Healthcare Provider Shortages

- Baby boomer doctors are retiring within the next 5-10 years
  - Particularly serious for primary care
- Baby boomers in general are retiring and will need care – not enough physicians
- Physician extenders will pick up slack
- Availability and accessibility may suffer
  - Delay in diagnosis

Physician Extenders

- Patchwork of state laws
  - Licensing and certifications not uniform
- Present unique exposures
  - Are they supervised?
  - Job descriptions?
  - Extenders are an *extension* of the physician
    - Who is ultimately in charge?
- Where is care being provided?
  - Chain of command
- Confusion of the patients

Dynamic Changes In Healthcare

- Electronic Medical Records
  - Introduce new sources of liability – data breach
- Patient Safety Initiatives
  - May unwittingly increase the standard of care – leading to more claims
- Technology/Medical Advancements
  - Raise expectations

Impact on MPL Insurance

- Shift from independent practice to group or health system employment
  - More focus on group coverage/rating methods
  - Coverage afforded at employer facility only
  - Physician may be covered under multiple policies if s/he works for multiple ACO's
- Physician liability exposures shifting into self-insured plans
  - Physician is still personally liable
  - SIR may not be adequately funded
- M&A Activity
  - Hospitals purchasing hospitals, hospitals purchasing physician groups
  - MPL insurers making acquisitions
- Soft market conditions

Per Patient Visit Coverage

- Benefits
  - Convenient where group/employer is paying for coverage
    - Reduces need to track individual doctors on insurance policy
  - More precise measure of claim exposure
  - Auditable exposures
  - Allocation of MPL insurance costs

Per Patient Visit Coverage

- Complexities
  - Insurance coverage attaches to patient visit, not physician
    - Physician will still be named and must respond to a claim
  - Limited underwriting of individual physician
  - Claims-made coverage issues
    - Calendar year patient visits reflect exposure to medical incident, not reporting of claim
    - Tail exposure issues
  - Best suited for focused specialty groups – ER groups

Per Patient Visit Coverage

- Complexities *cont'd.*
  - Converting annual physician rates to per visit rates
  - Blending specialties
  - Contractual concerns
  - Determining claims-made premiums
  - Deferring the day of reckoning – the TAIL

Per Patient Visit Coverage

Tail Exposure

- Four scenarios for a physician leaving a group
  - Group continues to renew claims-made
  - Group terminates coverage and buys group tail policy
  - Group terminates coverage without purchasing tail
  - Physician gets separate individual tail policy
- Conflicts of interest between group insurance and departed physician

Per Patient Visit Coverage

- Underwriting Considerations
  - Determining what is a full time equivalent (FTE)
  - Retroactive coverage
  - Procedures not customary
  - Evaluating the procedures not the practitioner
  - Specialties that qualify for rating basis
  - Departed physician coverage for the physician and the entity
  - Tail coverage

Per Patient Visit Rating

Claims-made rating

- Accounting for change in exposures

	(1)	(2)	(3) = (1) * (2)
Calendar Period	Calendar Period Visits (000)	Expected Percent of Total Cost for Claims Occurring in Calendar Period and Initially Reported in 2011	Expected 2011 Reported Claim Exposure (000)
2007	8,000	10.0%	800
2008	8,000	25.0%	2,000
2009	8,000	30.0%	2,400
2010	8,000	20.0%	1,600
2011	8,000	15.0%	1,200
Total 2011 Claims-made/Reported Claim Exposure			8,000

Per Patient Visit Rating

- Complexities
  - Need to account for change in exposures

	(1)	(2)	(3) = (1) * (2)
Calendar Period	Calendar Period Visits (000)	Expected Percent of Total Cost for Claims Occurring in Calendar Period and Initially Reported in 2011	Expected 2011 Reported Claim Exposure (000)
2007	4,000	10.0%	400
2008	6,000	25.0%	1,500
2009	7,500	30.0%	2,250
2010	8,400	20.0%	1,680
2011	8,800	15.0%	1,320
Total 2011 Claims-made/Reported Claim Exposure			7,150

Per Patient Visit Rating

- Complexities
  - Need to account for change in exposures

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2007	8,000	10.0%	800
2008	8,000	25.0%	2,000
2009	8,000	30.0%	2,400
2010	8,000	20.0%	1,600
2011	3,000	15.0%	450
Total 2011 Claims-made/Reported Claim Exposure			7,250

MPL Underwriting Implications

- Inexperienced credentialing personnel "underwriting" physicians at facilities
- Physician malpractice coverage is very transactional, very detailed
- Big revenue generators may not be the best MPL risks
- Exactly what coverage is to be provided – coverage agreements added to employment contracts
- Costs allocation
- It all boils down to money

Burning Issues

4 Major Issues Impacting Innovation

- Uncertainty of Patient Protection and Affordable Care Act
- Hospitals struggling to survive: inner city and rural hospitals especially vulnerable
- Mergers, acquisitions and affiliations
- Regulatory encroachment

Recommendations

- Need to consider the appropriateness of relying on historical data without adjustment
- Need to keep informed by having regular discussions with underwriters and claims personnel
- May need more frequent monitoring of developing claims experience
- Need to understand the implications of alternative rating methodologies, particularly in the transition phase.

QUESTIONS?