Trends in Medical Malpractice Insurance New Complexities

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Session Objectives

- The landscape of Healthcare Industry is changing rapidly
- This leads to significant changes in exposure under medical professional liability policies
- Usefulness of unadjusted historical claims data for pricing and reserving purposes may be limited
- Other qualitative and quantitative information may be used to supplement (or replace) historical claims
- Shine a light in the darkness

What is changing?

- Clinical Specialties
- Technology
  - Clinical
  - Operational (EHR/EMR)
- Payer system
- Entity ownership
- Clinical procedures
- Episodic/acute care versus chronic care
- Population health
- Loss ratio, Loss frequency vs. severity
- Shared mid-level/physician limits
- Reputational risk

Context: Some General Facts About Healthcare

- Size of healthcare industry: $2.8 trillion
- Amount spent by Americans on health/wellness: $267 billion
- Average cost per inpatient day: $2,025 for non-profit hospitals, $1,629 for for-profit hospitals
- According to the American Hospital Association, Number of hospitals in the United States: 5,724 with 2,903 not-for-profit, 1,025 for-profit and 1,045 publicly owned.
- About 53 percent of United States hospitals are part of a health system
- According to the Association of American Medical Colleges, the estimated physician shortage by 2015 was predicted as 150,000 fewer physicians than needed by 2015.

PwC Health Research Institute, "Top Health Industry Issues of 2015: Outlines of a Market Emerge ," December 2014

Healthcare Complexities

- Acute care
  - Community hospital
  - Teaching hospital/academic medical center
  - Critical access hospital
  - Specialty hospitals
  - Long term acute care hospitals (LTACH)
- Ambulatory/outpatient centers – more than 50 types of clinical services, e.g.
  - Imaging centers
  - Ambulatory surgery centers
  - Medispas
- Home health and hospice
  - Nursing
  - Personal care
  - Respiratory
  - Physical therapy
  - Durable Medical Equipment (DME)
- Long term care
  - Skilled nursing facilities
  - Rehabilitation centers
  - Assisted Living
  - Continuing care retirement communities (CCRC)

Context: Physician Complexities

- Employees
- Contracted
- Maintenance of private practice while on staff
- Staffing firms
- *Locum tenens*
- Licensure

Specialties – General

- Overlap among services provided
- Clear distinctions difficult
- Technology impact on specialties
- Refinements in specialties – quantifying
- Major/minor/no-surgery – what are the distinctions?

Specialties: Internal Medicine

- MONEY/FINANCING!!!
  - Medicare/Medicaid – reimbursements short of what is needed to sustain practice
  - Shortages anticipated
- Looking for Money/Financing in all the wrong places
  - Nursing homes = place for new revenue = quantifying exposures
  - Not making hospital rounds (hospitalist) – not visiting hospitals and failure to update skills
  - Specialists being hired/not primary care = Why?
  - New tests and new technologies

Specialties: OB/GYN

- New procedures performed in office
- Physical examinations
- Midwifery
- Prenatal testing
- New technology monitoring status

Specialties: Diagnostic and Therapeutic Radiation

- No longer solely reading slides
- Therapeutic versus diagnostic
- Cases:
  - Over-radiation
  - Misdiagnosis

  http://www.crainsdetroit.com/article/20150719/NEWS/307199980/fata-case-concerns-who-collects-judgment-who-else-to-blame
- Revenue shortfall
  - Additional testing ordered and performed

Healthcare Staffing Complexities

- Working conditions: Inadequate staffing and mandatory overtime are endemic within the industry.
- Aging workforce: Average age of nurses is 45.5 years, increasing at more than twice the average rate of all other occupations – which is one of the factors generating the nation's chronic nursing shortage.
- Increasing demands: Reduction in average length of hospital stay produces greater acuity and complexity of care, taxing staff and inducing both errors and burnout.
- Hospitals and other healthcare organizations are thus highly vulnerable to understaffing, staff credentialing and competency issues, as well as workers' compensation claims.

Healthcare Staffing Complexities

- Over 50% of physicians are experiencing burnout
  http://www.mayoclinicproceedings.org/article/S0025-6196(15)00716-8/abstract?cc=y

- Disturbing physician trends
  - "400 US physicians are dying by suicide each year"
  - Physicians remain in practice …show higher propensities for making medical errors and diminished quality of medical practice …"
    http://www.mayoclinicproceedings.org/article/S0025-6196(15)00798-3/fulltext

Ambulatory/Outpatient Services Complexities

- Ambulatory Surgery Centers
- Pain Management Center
- Cancer Centers
- Lasik

- Does the risk at these locations differ from office/hospital settings?
- Does the physician working in this system requesting coverage merit the same rate = is the risk greater or lower
  - Complicated by admitted vs. surplus

Classification System

- Overlap in specialties
- Does this still work
- What is the source of the relativities?
  - How should they (or, should they) vary by state?
    - History – smaller class plan
    - All classes separately rated – does the data support this level of refinement
- Loss ratios
  - Should different specialties have different loss ratios?
    - Neurosurgery loss vs. family practice
    - Rate contemplates differing risk propensity. But, should the loss ratio and expense structure vary?

Classification: Entity Pricing Impact

- Exposure base
  - Acute care beds
  - # of patients
  - # of visits
- Corporate control
- Revenue
- Payer mix
- Judicial hellholes
- Risk level
  - Hospital
  - Outpatient
  - Patient population
  - Geographical locations

Alternative Access to Healthcare: Retail Care and Urgent Care Pricing Impact

- Oversight of advanced practitioners
  - Utilization
  - Supervision
  - Reimbursement
  - How many cases is a doctor able to review at night?
- Diagnostic capabilities
- Continuity of care

Technology Issues: Pricing Impact

"In 2015, the healthcare sector will begin to look and feel like other industries, catering to customers expecting one-click service. A true consumer-driven market is slowly taking shape."

"Patients are no longer satisfied with just meeting with their doctors. Increasingly, they expect to access lab results on their phones soon after leaving the medical center."

"The industry is developing products and services destined for sale directly to consumers, from wearable devices and mobile apps to health plans to be sold on private and public exchanges."

PwC, "Top Health Industry Issues of 2015"

Payer Complexities: Pricing Impact

- Private Pay, Medicaid, Medicare, individual payments
- Value-based reimbursement
- How does payer mix affect liability
- Non-sustainable payments forces providers into other arrangements
  - Moonlighting
  - Independent medical reviews
  - Consulting work

Data: Electronic Health Records/Electronic Medical Records Pricing Impact

- Improve or weaken professional liability claims?
- Electronic patient charts–physicians using it effectively – getting it right?
- HIPAA challenges
- Cyber breach
- New sources of information for plaintiffs
  - Industry average is 1/10 require procedure; specific physician patients 6/10 require
  - Industry –10% have symptom; physician 40% have sympton

Entity Ownership: Pricing Impact

- For-profit vs. not-for-profit
- Joint venture with healthcare system
- Exposure base
- Expansion of physician practices
- Percentage of physicians covered
  - How many are enough?

Clinical Procedures: Pricing Impact

- Non-FDA approved devices
- Off-label use of approved devices
- New procedures
- New technologies
- Credentialing and privileging
- State scope of practice act limitations

Episodic/Acute Care vs. Chronic Care: Pricing Impact

- With new data tools to monitor
  - Episodic care – higher exposure?
  - Chronic care?
- Chronic Care
  - Other symptoms
- What is the case load of the physician?
  - Pressure for utilization
  - Time management resulting in failure to diagnose and identify condition

Advanced Practice/Mid-Level Providers

Physician Assistant

Nurse Practitioners

Midwifery (RN/Lay)

CRNA

Physical Therapists

Pharmacists

- Share limits with entity or physicians
- Direct Patient Access vs. physician supervision requirements
- Prescription authority
- Ancillary care
- Are the limits sufficient?

Losses

- Frequency
- Severity
- Ratio
- Incidents
- IBNR

Conundrum – what factors make a difference?

- Limits
  - Each and every
  - Aggregate
  - Shared
- Allocated Loss Adjustment Expense (ALAE)
- Base rates – credits and debits
- Incident reporting and IBNR
- Claim frequency and severity
- Loss development and trend factors
- Confidence levels
- Earned exposures
- Indexing and inflation factor
- Occurrence vs. claims made
- Healthcare Market Index
- Reimbursement levels
- Entity profitability/financial security
- Public ratings

Healthcare Reform – Future state

- Healthcare reform is the result of a cost and quality crisis
- To compete, healthcare organizations must flow with the tide toward:
  - Greater accountability
  - Total commitment to quality
  - Outcomes-driven decision-making
  - Intelligent adoption/use of technology
  - Patient-centered medicine
  - Emphasis on prevention
  - Employee empowerment and two-way communication
  - Enterprise risk management
  - Strategic thinking – tempered by humane, responsible values

THANKS FOR YOUR INTEREST!!!

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