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PERSPECTIVES



In healthcare, managing risk is a journey

Changing marketplace calls for strategic approach

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When a patient is injured or ill, the road to complete recovery may be lengthy. It often requires multiple steps and can take weeks, months and occasionally even longer. Similarly, in medical professional liability, managing risk is an ongoing journey — rather than a destination.

Hospitals, physician groups and senior living facilities face a changing and challenging marketplace. On top of evolving regulations and an increasingly aggressive litigation environment, loss severity is rising for many healthcare entities.

Claims severity increasing

Some trends contributing to this rise in loss severity include:

Advancements in care. Technological innovations are making a major impact in healthcare. Advancements enable medical professionals to sustain patients' lives, but can also prove to be a double-edged sword. Sometimes life-saving treatments are accompanied by reductions in the quality of life.

An example is post-operative sepsis. Not long ago, sepsis was a significant cause of patient mortality. Today, healthcare providers are better able to treat it promptly and help patients recover. In some circumstances, however, sepsis treatment may require amputation or other surgeries that can alter a patient's lifestyle dramatically.

Charges of reduced quality of life are becoming more common in litigation, pressuring healthcare organizations to second-guess their delivery of care. Aggressive plaintiffs' attor-

neys also inflate the costs of life care plans, which can sway juries toward awarding larger verdicts. Reasonable, quality care often can be provided at less cost than many plaintiffs suggest, but medical cost inflation is one factor in claims severity.

Divide and conquer in the courtroom. A continuing and long-existing trend that can drive severity in medical professional liability claims is when attorneys seek to divide the interests of the healthcare team by encouraging physicians and nurses to point fingers at each other regardless of fault. This tactic (often seen with hospitals that employ physicians who previously were in group practices — often insured under a single set of limits) can further impact a claim especially when a physician witness no longer is employed by the hospital and therefore may be less cooperative throughout the litigation or even a disgruntled former employee. While hardly a new approach, it's one that we see more frequently in healthcare litigation.

To mitigate against the divide and conquer risk, healthcare organizations should also consider their medical record/documentation policies, which can aid in illustrating the degree of care provided at the relevant time. Where time passes between an alleged event and a claim, poor or limited record keeping may lead to further dispute over the degree of care provided, thereby increasing the impact of a former employees' testimony against the healthcare provider. This may ultimately drive up the value of the claim.

Uncertainty over the Affordable Care Act. Attempts in Congress to

roll back elements of the Affordable Care Act have failed, but efforts to repeal the ACA continue to contribute to uncertainty over the affordability and availability of healthcare. That uncertainty inevitably puts medical malpractice cases in a bad light. For example, if a patient paying thousands of dollars out of pocket has a bad treatment experience, that patient is more likely to want to punish the healthcare providers — another factor driving claims severity.

Other healthcare challenges

The above trends aside, transformation in the healthcare reimbursement system continues to create operational and financial challenges for hospitals, physicians and senior living facilities. A study by the Federation of American Hospitals and the American Hospital Association estimates that, between 2010 and 2028, hospitals will face a cumulative \$218.2 billion in payment cuts¹ from the Centers for Medicare and Medicaid Services.

One effect of payment reductions: consolidation.² This remains a constant in the healthcare marketplace as hospital systems seek to capture patients and deliver higher-value care. Additionally, large managed care organizations continue to acquire physician groups. Competition in the face of consolidation remains a theme of the overall healthcare market.

From funded litigation against health systems, to shrinking reimbursements, healthcare organizations have a lot on their plates. Rising liability exposures put addition-

al stress on their balance sheets. Likewise, the insurance industry is struggling to respond to the uptick in claim severity and frequency of severity. The importance of a healthy marketplace cannot be underestimated as we move toward necessary rate strengthening in order to provide stability over the long term.

Despite these conditions, it's not all doom and gloom. Healthcare providers have many reasons to remain optimistic that better days are ahead. A crucial step in that journey is managing risk carefully, in a strategic way.

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¹ www.aha.org/news/headline/2018-06-14-study-federal-cuts-hospitals-will-total-218-billion-2028

² www.healthaffairs.org/doi/10.1377/hblog20180126.137502/full



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