

# Partnering Through Turbulent Times: Weathering a Difficult Insurance Market, Together

**T**he most effective and enduring partnerships share successes and weather challenges. Today, health care providers and their insurers find their partnerships tested by an unprecedented frequency of severe liability claims.

Leo Carroll, Head of Healthcare Professional Liability at Berkshire Hathaway Specialty Insurance (BHSI), shares his perspective on the shared challenges of market conditions and how working collaboratively on solutions can strengthen partnerships even in difficult times.

## WHAT THE LAST FEW YEARS IN HEALTH CARE HAVE SHOWN US

The last three years have produced an unprecedented rise in judgments against health care providers, with severe verdicts rendered far beyond the traditionally difficult venues like New York City, Philadelphia, Chicago and Miami.

As troubling, during the same period of reported claim activity (2011-2014), the number of judgments are rising steadily at every level measured: Above \$5m, \$10m and \$15m. In other words, severity activity appears to have moved well beyond an occasional shock loss or ‘runaway verdict,’ but rather a sustained escalation in the number of large value claims.

This persistent and troubling trend has created challenges for health care providers and their insurers.

After several consecutive years of underwriting losses as measured by combined ratios above 100 in the medical liability industry segment, insurers continue advancing corrective actions. With diminishing reserve redundancies from prior years, the pressure has increased to address poor underwriting results produced by unrelenting severity.

Global, national, regional and mutual carriers are substantially reducing capacity or exiting the health care market segment altogether. The years of surplus capacity is winding down. Brokers and health care providers are facing difficulty renewing existing limits, and pricing on renewal options reflects worsening severity.

Consequently, health care providers nationwide face the prospect of renewing programs with significantly

increased rates and altered terms and conditions. Coverage provisions may vary by layer, both on excess programs and within captive reinsurance structures.

Some buyers may struggle to secure commitment to large limit towers (> \$150m) due to shrinking appetite among carriers for large limit higher-excess placements at minimum premiums.

On the surface, market dynamics have the potential to create friction between insurers and insureds at renewal, particularly in the absence of effective dialogue.



*“We understand a challenging insurance market can impact our customers’ and brokers’ budgeting and planning processes.”*

— **Leo Carroll**, Leo Carroll, Head of Healthcare Professional Liability, BHSI

## EFFECTIVE PARTNERING: A COLLABORATION AMONG PROVIDERS, BROKERS AND INSURERS

At BHSI, we approach market changes as an opportunity to collaborate. In our experience, four practices are key to strengthening partnerships in volatile times.

### 1. COMMIT TO SHARED LONG-TERM OBJECTIVES.

Health care providers, insurers and brokers do share common objectives: effectively managing risk and maintaining a healthy, resilient insurance market.

To achieve this, we’re identifying structural options that are sustainable over the long term and through varying market cycles. Maintaining a long-term focus provides stability through the challenges of a difficult market cycle.

### 2. EARLY AND ONGOING COMMUNICATION AND TRANSPARENCY.

In an effort to set informed expectations, BHSI aims to avoid surprising customers and brokers with

difficult information.

We understand a challenging insurance market can impact our customers’ and brokers’ budgeting and planning processes, and approach conversations realizing issues such as premium increases can create stress for our customers.

To minimize this, we promote a dialogue early in the underwriting process that includes insight into our technical analysis, changes in the tort environment, strategies of defense and plaintiff firms, shifts in territorial results — and observations in how to effectively navigate these conditions.

### 3. A DATA-DRIVEN APPROACH WITHIN A BROADER DIALOGUE.

After listening to our customers’ objectives around risk transfer, we work to provide insurance programs with options.

Informed and guided by customer data, we analyze a customer’s loss experience within a framework of broader data and analytics.

We can then provide our customers with insight into how and why we arrive at our recommendations. In our experience, the result is a shared understanding and readiness to move forward with trust and confidence.

### 4. DEPLOY UPDATED, COLLABORATIVE APPROACHES TO DIFFUSE AND RESOLVE INCIDENTS.

Beyond adjustments to insurance programs, BHSI is supporting customers in their efforts to stem the severity trends. Early, transparent intervention is key — whether managing an incident of patient harm or addressing a formal claim.

Comprehensive Communication and Resolution Programs (CRPs) are evolving both in terms of approach

and effectiveness. CRPs can help to enhance patient safety, preserve patient-provider relationships and ensure lessons are learned to lessen the chance of and even prevent future incidents.

BHSI is helping to deliver expert resources to our insureds and our industry through sponsorship of the Collaborative for Accountability and Improvement (see [bhspecialty.com](http://bhspecialty.com) for more information), a physician-led organization that advocates and provides training in the use of CRPs.

Early engagement, clear explanations and advocating for a compassionate dialogue between providers and patients sets the stage for the most positive outcomes even if harm occurs. CRPs can help by encouraging acknowledgement and prompt communication following an unexpected outcome.

By reaching out with candor and compassion, the door remains open to early resolution (including compensation where appropriate) and the avoidance of protracted and costly litigation. Early, transparent intervention and communication are recognized as meaningful strategies as BHSI partners with customers during claims resolution.

The trends driving severity of health care liability claims show no signs of abating. Medical inflation, exaggerated life care plans, and plaintiffs’ strategy to pit doctors against hospitals to drive up litigation awards, will continue. Uncertainty around emerging issues, such as continued threat of liability related to opioid addiction, adds to the pressure of recent verdicts and settlements.

There is no question it’s a challenging time for the healthcare industry.

BHSI believes there is no better time to demonstrate the strength and benefits of partnership as we tackle market turbulence together with our customers and brokers.



Berkshire Hathaway Specialty Insurance

For more information, please visit: [bhspecialty.com](http://bhspecialty.com)