NATIONAL MEDICAL MALPRACTICE TRENDS: 2016

Overview

- Positive and Negative Medical Malpractice Trends
- Medical Malpractice Insurance Trends
- Medical Malpractice Claim Trends: Physicians and Hospitals
- Emerging Trends
- Concluding Thoughts

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National Medical Malpractice Trends: Positives and Negatives
NATIONAL MEDICAL MALPRACTICE TRENDS

2016: The National Medical Malpractice Environment

The Positives

- Claims counts/frequency still down markedly (historic low?)
- Severity rising slowly but actuarially predictable and manageable
- Increased competition in the insurance market makes for favorable pricing across all health care professional liability segments
- Industry Combined Ratio: HPL has been profitable for 10+ years
- Tort reform laws continue to be upheld in most states
NATIONAL MEDICAL MALPRACTICE TRENDS

2016: The National Medical Malpractice Environment

The Negatives

- A few carriers have recently withdrawn from HPL
- Claims costs/expenses rising
- The numbers of large verdicts is increasing nationally
- Shock verdicts (($10M+): ripple effect?
- More competition drives down rates further: too low?
- More systemic (batch) claims; examples to follow
National Medical Malpractice Insurance Trends
MEDICAL MALPRACTICE INSURANCE TRENDS

- Medical malpractice continues as the most profitable line of P&C insurance: Best’s Combined Ratio of 93.2 as of 12/31/14
- Fierce competition and rate decreases continue across all segments: hospitals, physicians, long term care, managed care, facilities
- Market consolidation by acquisition continues and likely to continue.
- Reinsurance market has been favorable; more capital coming in
- Continued growth of health care captives/RRGs: 253 Cayman health care captives; 100 Vermont captives
- New carrier entrants 2014-2016: Liberty International, AXIS, RLI, Hallmark Pro, ProPraxis
MARKET CONSOLIDATION

Market consolidation by acquisition continues and likely to continue:
e.g. Med Pro buys PLICO; MAG invests in COPIC (both in 2015)

Reinsurance market has been favorable; more capital coming in

Continued growth of captives/RRGs: 300+ Cayman health care captives; 145 health care RRGs, numerous captives

A.M. Best: “…the medical professional liability sector is stable…”

Reform has had little or no impact to date aside from EMR issues in litigation

Price competition in every segment especially hospitals and physicians/groups
National Medical Malpractice Claim Trends
National Medical Malpractice Claim Trends – Physicians
Average Indemnity Payments by Physician Specialty (2013 dollars)

- Average indemnity payment for all healthcare specialties (2009-2013) was $342,384.

- Average indemnity payments ≥$400,000
  - Neurosurgery
  - Neurology - nonsurgical
  - Obstetric and Gynecologic Surgery
  - Pediatrics
  - Anesthesiology
  - Radiology
  - Pathology
  - Cardiovascular and Thoracic Surgery
  - Emergency Medicine
  - Internal Medicine
  - Gastroenterology
  - Urologic Surgery
  - Otorhinolaryngology
  - All Healthcare Specialties
  - General Surgery
  - Gynecology
  - Other Nonsurgical Specialties
  - General and Family Practice
  - Orthopedic Surgery
  - Ophthalmology
  - Radiation Therapy
  - Paraprofessional
  - Cardiovascular Diseases - nonsurgical
  - Psychiatry
  - Dermatology
  - Plastic Surgery
  - Oral Surgery
  - Resident/Intern
  - Dentists
## Most Expensive Outcomes (2009-2013) Physician Claims

<table>
<thead>
<tr>
<th>Resulting Medical Condition</th>
<th>Closed Claims</th>
<th>Paid Claims</th>
<th>% Paid-to-Closed</th>
<th>Total Indemnity</th>
<th>Average Indemnity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cardiac/cardiorespiratory arrest</td>
<td>2,821</td>
<td>714</td>
<td>25.3</td>
<td>$245,721,905</td>
<td>$344,148</td>
</tr>
<tr>
<td>Brain damaged infant</td>
<td>536</td>
<td>198</td>
<td>36.9</td>
<td>$156,882,467</td>
<td>$792,336</td>
</tr>
<tr>
<td>Birth trauma</td>
<td>540</td>
<td>223</td>
<td>41.3</td>
<td>$122,633,510</td>
<td>$549,926</td>
</tr>
<tr>
<td>Breast cancer</td>
<td>808</td>
<td>259</td>
<td>32.1</td>
<td>$119,236,299</td>
<td>$460,372</td>
</tr>
<tr>
<td>Accidental puncture or laceration during a procedure</td>
<td>866</td>
<td>263</td>
<td>30.4</td>
<td>$88,528,124</td>
<td>$336,609</td>
</tr>
</tbody>
</table>
Top Chief Medical Factors (2009-2013) Physician Claims

- Diagnostic Error second by number of closed claims; highest by average indemnity payment.
Ob/Gyn MPL Data (2013 Dollars)

- 286,000 closed claims in *all specialties* since 1985
- Ob/Gyn has 2nd *highest number* of claims during last 5 years (2009-2013)
- Ob/Gyn claims 21% *more* expensive to defend
- Percentage of paid claims in Ob/Gyn (30%) significantly *above the norm* (27%)
- Total indemnity paid since 2009 = **$667 million** (#1 specialty)
- Ob/Gyn had 3rd highest average indemnity since 2009 = **$420,125**
Diagnostic Error – Specialty Groups (2009-2013)

- **Non-Surgical**
  - Diagnostic Error: 30%
  - Other CMF: 70%

- **Surgical**
  - Diagnostic Error: 9%
  - Other CMF: 91%

- **Hospitalist**
  - Diagnostic Error: 22%
  - Other CMF: 78%

- **Advanced Practice Providers**
  - Diagnostic Error: 26%
  - Other CMF: 74%
## Physician Trends of Note

### 5 Year Intervals (2004-2008) and (2009-2013)

<table>
<thead>
<tr>
<th>Classification</th>
<th>% Paid-to-Closed</th>
<th>Average Indemnity</th>
<th>Average ALAE</th>
</tr>
</thead>
<tbody>
<tr>
<td>OB/Gyn</td>
<td>Lower</td>
<td>Lower</td>
<td>Higher</td>
</tr>
<tr>
<td>Radiology</td>
<td>Same</td>
<td>Higher</td>
<td>Higher</td>
</tr>
<tr>
<td>Medication Errors</td>
<td>Higher</td>
<td>Higher</td>
<td>Higher</td>
</tr>
</tbody>
</table>
Approximately 1% of all physicians accounted for 32% of all claims in the NPDB.

2005-2014 time frame; 67,000 paid claims.

Risks of recurrence varied greatly by specialty: e.g. neurosurgery, orthopedic surgery, general surgery, plastic surgery, OB/GYN had 2x greater risk than IM.

Only 6% of all active U.S. physicians had a paid claim in that time frame.
National Medical Malpractice Claim Trends – Hospitals
BerkleyMed’s Proprietary Database

Multiple Facility Types
- Acute care
- Teaching
- Children’s

2,722 Hospitals
Around the Country
740 Health Systems

Net Patient Service Revenue
- $100M - $500M
- $500M - $1B
- $1B +

72%
75%
80%
Percentage of the market housed in our database

21 of the top 25
largest non-profit hospital systems
(as identified by Becker’s Hospital Review)

Service Levels of Care
Trauma Level
- Level 1: 30%
- Level 2: 30%
- Level 3: 40%

OB Level
- Level 3: 30%
- Level 2: 30%
- Level 1: 40%

74% of acute care hospitals with NPSR > $100M
60% of all teaching hospitals
75% of all acute care children’s hospitals
* As classified by AHA data
Hospital Claims for High-Risk Services Generate over Half of Total Liability Dollars

Based on closed Claims data from BerkleyMed’s proprietary hospital malpractice claims database.

Approximately 45% of claims costs come from two services - Obstetrics and Surgery.
Ground up frequency has been slightly declining, while excess frequency has been flat.
Ground up settlement values have grown ~5% per year; settlement values on catastrophic claims had been flat until 2015.
### Berkley Med 2015: XS Hospital Claim Trends of Note

<table>
<thead>
<tr>
<th>Claim Classification</th>
<th>Frequency</th>
<th>Severity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obstetrics</td>
<td>Flat</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Radiology</td>
<td>Higher</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Diagnostic</td>
<td>Higher</td>
<td>Higher</td>
</tr>
<tr>
<td>Hospital Acquired Infections</td>
<td>Higher</td>
<td>Higher (Ground Up)</td>
</tr>
<tr>
<td>Falls</td>
<td>Lower</td>
<td>Lower</td>
</tr>
<tr>
<td>Neurological</td>
<td>Higher</td>
<td>Higher</td>
</tr>
</tbody>
</table>
Growth in expense payments have outpaced growth in settlement values, 8% versus 6%.

Expense payments on catastrophic claims have seen more modest growth of 2-3%.
About one out of every 3,711 births results in a medical malpractice claim with indemnity.

The average value of these cases, including defense, is about $1.1M.

The cost per delivery to cover liability is, on average, $296.

Source: BerkleyMed, 2015
The frequency of obstetric related claim settlements has stabilized in recent years.

<table>
<thead>
<tr>
<th>Settlement Year</th>
<th>Ground-Up</th>
<th>Excess of $1M</th>
<th>Excess of $3M</th>
<th>Excess of $5M</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>3.3</td>
<td>0.79</td>
<td>0.35</td>
<td>0.13</td>
</tr>
<tr>
<td>2011</td>
<td>3.4</td>
<td>0.79</td>
<td>0.41</td>
<td>0.19</td>
</tr>
<tr>
<td>2012</td>
<td>3.3</td>
<td>0.76</td>
<td>0.32</td>
<td>0.15</td>
</tr>
<tr>
<td>2013</td>
<td>3.6</td>
<td>0.82</td>
<td>0.43</td>
<td>0.23</td>
</tr>
<tr>
<td>2014</td>
<td>3.4</td>
<td>0.68</td>
<td>0.33</td>
<td>0.13</td>
</tr>
<tr>
<td>Growth Rate</td>
<td>1.0%</td>
<td>-2.4%</td>
<td>-0.7%</td>
<td>1.7%</td>
</tr>
</tbody>
</table>
Frequency of catastrophic radiology related claims has risen dramatically - especially for large claims; however, they only represent a small percentage of claims.
Settlement values of radiology related claims have been on the rise.

<table>
<thead>
<tr>
<th>Settlement Year</th>
<th>Ground-Up</th>
<th>Excess of $1M</th>
<th>Excess of $3M</th>
<th>Excess of $5M</th>
</tr>
</thead>
<tbody>
<tr>
<td>2010</td>
<td>342,189</td>
<td>2,648,047</td>
<td>4,908,613</td>
<td>7,055,146</td>
</tr>
<tr>
<td>2011</td>
<td>401,045</td>
<td>3,151,686</td>
<td>5,716,019</td>
<td>8,400,000</td>
</tr>
<tr>
<td>2012</td>
<td>434,313</td>
<td>2,770,333</td>
<td>5,093,485</td>
<td>7,000,000</td>
</tr>
<tr>
<td>2013</td>
<td>594,315</td>
<td>4,051,014</td>
<td>9,575,000</td>
<td>13,208,333</td>
</tr>
<tr>
<td>2014</td>
<td>413,852</td>
<td>2,566,551</td>
<td>4,981,250</td>
<td>6,804,375</td>
</tr>
<tr>
<td>2015</td>
<td>594,772</td>
<td>2,398,392</td>
<td>4,615,668</td>
<td>5,562,672</td>
</tr>
</tbody>
</table>

Growth Rate
- Excess of $5M: 9.5%
- Excess of $3M: -2.1%
- Excess of $1M: -0.3%
- Ground-Up: -3.3%
## Hospital Excess Claims Review

### Obstetrics
- Failure to diagnose fetal distress
- Failure to timely perform Cesarean
- Surgical care
- Shoulder dystocia

### Radiology
- Batch events
- Interventional Radiology
- Monitoring
- Radiation Burns
- Communication
- MRI Safety
Hospital Claim Trends

Zurich Annual Benchmark Report

- Issued October 2015
- Overall trends reported for AY 2004 - 2012
- Over 363,000 claims and about $26 billion in estimated ultimate losses
- Zurich claims and underwriting data submitted to Zurich
- 2012 was the cut off year to allow for maturation of claims

Source: Zurich Insurance 2015
Hospital Claim Trends

Zurich 2015 Claims Analysis: Key Findings

- Claim frequency: “remains steady”
- Severity trending up. Rose 4% per year from 2007 to 2012
- IL, NY, PA lead in severity
- Frequency of large claims continues to rise
- Large claim pctg >$1M and those >$5M but moving at the same pace
- Children’s hospitals had the highest severity followed by teaching hospitals. These two types of facilities had much higher severity than others and markedly lower frequency.

Source: Zurich Insurance 2015
Loss Cost per OBE Zurich Claims

Loss costs by state

Average loss cost per OBE:

- Below $1,200
- $1,300 - $1,900
- $2,000 - $3,000
- $3,400 - $4,200
- $4,500 - $5,600

Source: Zurich Insurance 2015
Zurich: Facility Dashboards
Frequency, Severity, Loss Cost

Source: Zurich Insurance 2015
CNA Hospital Claim Trends

CNA 2015 Claims Analysis: Key Findings

- Study time frame: 2005-2014
- Claim frequency: “remaining constant”
- Severity trended up from 2005 to 2014
- Most claims were in three areas: inpatient medical unit, ED, OR/Procedure rooms and units
- Perinatal claims had the highest average indemnity
- Encourages “vigorous attention” in these areas: communication, credentialing and privileging, medication safety, patient falls, pressure ulcers

Source: CNA 2015
National MPL Trends: Emerging Trends
EMERGING TRENDS

Systemic Risk/Batch Claims

- Plaintiff’s bar more aware of these types of claims; greater return
- Plaintiff paints hospital as highly focused on profit
- Examples: Unnecessary stents, surgeries, MRSA, Hepatitis C, compounding pharmacy, fungal meningitis
- Carriers reporting increased frequency of these claims
- Underwriters like risks with a strong RM and Patient safety culture: good organizational communication, proactive approaches to crises including scenario planning and training
EMERGING TRENDS

Miscellaneous

- Anecdotal increase in claims severity in 2015 must be watched for continuation. Some reports of increased frequency, but not uniform
- Underwriters concerned about depressed reimbursement creating RM issues: e.g. staffing, etc.
- Radiology claims must be noted/managed, especially more interventional radiology claims
- Diagnostic claims are of concern to underwriters due to ongoing physician integration; changes the hospital’s risk profile
- Reform will alter the standard of care over time
National MPL Trends: Conclusions
NATIONAL MPL TRENDS 2016: CONCLUSION

- Frequency remains at historic lows; severity is predictable
- Possible uptick in 2015 must be watched for trend
- Integration/Reform has yet to notably impact MPL risk
- Integration: Shift to outpatient care reflected in claims; but lower severity
- Cost for plaintiff’s to pursue malpractice cases is a huge barrier
- Telemedicine: Very few cases
- The public’s perception of hospitals and the health care industry must be closely watched, especially with consolidation
- Managing patient expectations is crucial in a time of transition
THANK YOU!