

The Willis Commentary on... Medical Malpractice

New York, NY, October 16, 2003 - The malpractice insurance problem continues to dramatically impact healthcare providers. Affordability and availability of healthcare professional liability coverage is a serious issue for all buyers, whether they are institutional, individual providers, or health plans. Premiums have skyrocketed as claims severity continues to rise. Soaring numbers of large malpractice verdicts and settlements are the cause. In July of this year, the U.S. General Accounting Office issued a report finding that "...increased losses appeared to be the greatest contributor to increased premium rates..."

Problems with the affordability and availability of malpractice insurance are having a direct effect on the affordability and availability of healthcare. Many physicians have left practices, curtailed services, or relocated as a result of exorbitant malpractice premiums. Hospitals have had difficulty in finding certain specialty physicians to provide on-call coverage. In addition to the expense incurred, many healthcare providers are spending more time than ever before securing insurance renewals. The problem is a major distraction.

Healthcare providers and their professional associations have collaborated as never before to lobby for malpractice reform legislation. There has been some significant success in obtaining relief at the state level, including some of the most distressed states such as Pennsylvania, Florida, and Texas. Although federal malpractice reform legislation had the strong backing of the Bush administration, any chance of immediate passage fell apart in the Senate this summer. Proponents intend to continue to push for federal tort reform.

Just as healthcare providers are focusing their external efforts on malpractice reform, they are also taking internal measures to control their cost of risk. These include risk control programs that place increased emphasis on traditional clinical risk management initiatives to reduce and eliminate patient injuries as well as committing to the purchase and implementation of technology that will promote patient safety, such as computerized physician order entry and bar-coded medication administration systems.

In this hard insurance market cycle, dramatic upward spikes in malpractice insurance costs have had a significant impact on provider's budgets. As a result, healthcare providers are increasingly utilizing alternative risk transfer approaches as methods to control costs over time. Deductibles, self insurance trusts, captives, risk retention groups, finite risk, are all being considered and implemented as appropriate.

The long-term outlook may be brighter with the enactment of malpractice reform in many states. More capital is coming into the healthcare professional liability market with some new carriers having been created in 2003, especially those entering the primary market.

July 1st renewals saw more price competition than seen the past two years, although pricing is still steep by providers' standards. In the near term, the malpractice problem will continue to present operational and fiscal challenges for all healthcare providers.

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Editor's Note: Paul Greve, Senior Vice President and Senior Consultant of Willis' Healthcare Practice Group can be reached at +1 615 872-3320.

Dow Walker, Chairman of Willis' Healthcare Practice Group can be reached at +1 615 772-3311.