



# Marketplace Realities 2008

& Risk Management Solutions

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The Healthcare Professional Liability insurance marketplace was more competitive in the first half of 2007 than any time since the late 1990s. With rate adequacy and stability in all major global marketplace venues, industry conditions for insurance buyers may be the best since the 1970s, and the near-term outlook is equally positive. Competitive conditions in the reinsurance marketplace have benefited the commercial Healthcare Professional Liability markets as well as healthcare industry reinsurance buyers.

The Healthcare Professional market segment has benefited from downward trends in loss experience as well. While conditions vary by state and jurisdiction, claim severity appears to have leveled off, and claim frequency is markedly reduced. These improvements result primarily from widespread state enactment of malpractice reform laws, rate adequacy and greater commitment to risk management, patient safety and quality initiatives.

High single-digit to 20% premium reductions, and on occasion reductions near 25 - 30%, have been the norm for renewals across most facility segments, with decreases of at least 5 - 10%, and often more, for physicians.

In such a competitive environment, insurance carriers are looking for ways to differentiate themselves. Multiyear programs, innovative program structures and enhanced coverage terms are available and negotiable.

## The National Medical Malpractice Environment

The national medical malpractice environment in 2007 may be the best in the last 10 years. Frequency is down markedly, while severity has moderated, albeit from historic highs. Clearly, the successful push for malpractice reform legislation in 30-plus states since 2000, especially the enactment of non-economic damage caps in many jurisdictions, has impacted the malpractice environment. One often overlooked factor is the media focus on the malpractice problem, which has affected the general public's attitude towards litigation. There are fewer patients engaging plaintiffs' attorneys, and the jury pool is looking more favorably on defendants in many jurisdictions. Organized medicine and state hospital association initiatives to pass tort reform measures often included media campaigns that successfully drew the link between the malpractice problem and healthcare access. The question remains whether such salutary sensitization and educational effects will erode over time.

Recognizing that they have been losing the battle for public opinion as to the malpractice problem's effect on healthcare access, the trial bar has reacted in a number of ways. First they are attempting to fund attempts to overturn damage caps and other malpractice reform laws, raising questions about their constitutionality. As part of the strategy, (called judicial nullification) the trial bar focuses on malpractice cases that elicit maximum sympathy and high damages.



Second, they are being more selective about the types of malpractice cases they are willing to accept and take to trial. Cases of clear negligence and/or high economic damages are preferred, as defense is more difficult. The result is higher demands, often unreasonable demands, for resolution prior to trial. The trial bar is still willing to gamble that juries will make large awards for the badly injured or deceased plaintiff at trial. The perfect case for them is a relatively young victim with dependent children or an injured child, as in a case involving obstetrics or pediatrics, and a life-care plan that the plaintiff's economists will often inflate to above \$10 million. This strategy totally avoids the non-economic damage caps limitation and makes certain high-damage malpractice cases potentially extremely volatile.

## Physicians and Surgeons

This segment has improved dramatically over the last two years after lagging in improvement behind other market segments of Healthcare Professional Liability. Physicians in most states are experiencing rate decreases ranging from low single digits to low double digits, typically 5 - 10%.

The number of start-up physician insurers, including risk retention groups and captives, has leveled off, but concern remains over the adequacy of the capitalization and thus long-term viability of some entrants. There has been a dramatic rise in the number of physician risk retention groups created over the last five years, and the numbers continue to grow, albeit at a much slower rate. Many are specialty focused.

Leading markets are MLMIC, Medical Protective, ProAssurance, The Doctors Company, NorCal, ISMIE, MAG Mutual, ProMutual and FPIC. Hudson and Darwin seek group business. AIG and CNA have sought to increase their writings in the physician market, with both seeking large group business. There are few remaining national carriers for physicians, with Medical Protective as the company closest to filling that niche for both individual physicians and groups. There has been continued consolidation in this segment, with ProAssurance purchasing PIC Wisconsin and The Doctors Company purchasing OHIC in 2006. The Doctors Company announced plans to acquire SCPIE in late 2007.

The London and Bermuda markets provide reinsurance and excess cover for physician captives and risk retention groups.

## Hospitals

This segment continues to be one of the most competitive within Healthcare Professional Liability. Improved underwriting results due to tort reform and patient safety and quality initiatives, along with new capital over the last five years – especially for excess business – have contributed to this trend. There is an abundance of capacity for both primary and excess coverage placements. July 1, 2007 renewals saw marked reductions, not infrequently in the neighborhood of 25 - 30%, and occasionally more. High excess layer pricing has softened, especially above \$10 million.

Attachment points for excess coverage are falling, and carriers are vying to be the lead layers in response to the improving environment and restored profitability. Primary Hospital Professional Liability carriers include ACE USA, Arch, Darwin, CNA, Zurich, AIG, Hudson Insurance, OneBeacon,



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Medical Protective, Catlin London, and several physician-owned insurers. AWAC US is a new entrant to the domestic primary market. Endurance Specialty has created a US underwriting facility targeting medium to small hospitals excess of a \$1 million retention. The most recent entrant to the domestic primary market is Max Managers US, willing to entertain submissions from accounts with retentions as low as \$100,000. Domestic excess writers include AIG, AWAC US, CNA, Zurich, Am Re, Berkley Medical Excess, Arch, OneBeacon, Max Managers US and ACE USA. London / European markets are Beazley, Catlin, Chaucer, Lexington, Liberty, Starr Excess, Aspen Re, Swiss Re, Hannover Re, Faraday, Hiscox, Starr, ACE and Amlin. Bermuda markets include Endurance Specialty Insurance Ltd., XL, Allied World (AWAC), Renaissance Re, Starr, ACE, Arch and Max Re.

## Long-Term Care

The long-term care segment continues its dramatic improvement over the last few years. Availability and affordability are no longer an issue for most buyers. Large chains usually retain a significant layer of risk but can build capacity in London and Bermuda or buy down large retentions using alternative risk structures. On the other hand, small- to mid-sized insurance buyers may find it more difficult to buy high excess layers of coverage. AIG and CNA are major underwriters. Others include ACE USA, OneBeacon, Old Colony, James River, Uni-Ter, Bunker Hill, Lighthouse Underwriters and Shand Morahan. London and Bermuda are important markets for long-term care business – London for primary and excess/reinsurance capacity and Bermuda for reinsurance. Participation will vary by attachment level and risk profile.

## Managed Care

This segment remains stable but with fewer markets than any other segment. Only five underwriters offer primary coverage: Darwin, Lexington, Travelers, ACE and OneBeacon. Excess underwriters include the London market (Beazley, Lexington, Starr Excess, Liberty and Hiscox) and Bermuda markets (ACE, AWAC, Endurance, Starr Excess, Max Re and XL). Domestic excess underwriters include Darwin, OneBeacon, ACE, National Union and Travelers.

Retentions are flat, but insurers are imposing sub-retentions/sub-limits for class action and antitrust claims. Coverage for claims alleging release of confidential medical information has liberalized. The scope of regulatory agency exclusions has expanded. Single-plaintiff claim (i.e., denial of benefits) frequency and severity are down, but those types of claims are being supplanted by antitrust actions, business dispute claims (from providers, employers and regulators) and vicarious liability litigation.

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