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PROFESSION

Liability premium relief good for doctors, unsettling for insurers

Most physicians saw their insurance rate hold steady or decrease in 2012, a new report says. But experts say the market eventually will shift, bringing increases.

By CAROLYNE KRUPA, amednews staff. Posted Oct. 22, 2012.

Small but persistent declines in medical liability insurance premiums have many insurers concerned about the future of their industry. Yet doctors are benefiting from lower rates and rising competition among insurers vying for their business.

Nearly 60% of premiums nationwide held steady in 2012, and about 26% decreased, according to the *Medical Liability Monitor* Annual Rate Survey. Only 15% of premiums increased.

Overall, rates fell 1.7% in 2012. In the previous two years, they dipped 0.5% and 0.2%, respectively, the October report said. The result is a continuing “softening” of the medical liability insurance market in the last several years, characterized by declining rates and low returns on investment for insurers.

Medical Liability Monitor Editor Mike Matray was surprised to see the decline continue. *MLM*'s 2011 report noted that the market has been soft twice as long as previous soft markets. “No one really knows how much longer this trend will continue,” he said.

For now, insurers are seeing strong financial performance despite the downward trend, but that can't continue, Matray said. If rates keep falling as they have the last five years, the industry's financial results eventually will become insupportable.

“In the near term, this is certainly a good market for physicians, because there is plenty of coverage available, and pricing is extremely competitive,” said Brian Atchinson, president and CEO of the Physician Insurers Assn. of America. “Long term, however, if the market hardens, physicians could be facing conditions similar to those in the late 1990s.”

During that time, overall rates were high and coverage was difficult to find in some areas and specialties, Atchinson said.

Even with the market leveling off in recent years, American Medical Association President Jeremy A. Lazarus, MD, said physicians are still paying too much.

“The AMA continues to work for proven reforms to rein in the broken medical liability system, reduce the growth of health care costs and preserve patients' access to medical care,” Dr. Lazarus said. “Five years of little or no decreases in premiums have not offset the magnitude of increases that occurred prior to 2008 during this crisis. We are committed to testing alternative reforms, such as safe harbors for the practice of evidence-based medicine, to determine if these innovations can improve patient care and reduce costs.”

Physicians face fewer claims

Although the average cost to defend claims has risen in recent years, the number of claims has fallen significantly, said Rob Francis, chief operating officer of the Doctors Company. He and other industry experts say the number of claims filed is about half what it was a decade ago. National aggregate numbers are not available.

“At this point, the impact on physicians has been generally positive, since they have seen their premiums come down to 2003 levels,” Francis said. “Unfortunately, even those levels are too high, as we still close over 80% of claims filed against our members with no payment to plaintiffs.”

The decline in claims is the largest factor contributing to falling premiums, said Chad C. Karls, editor of the *MLM* survey and principal and consulting actuary with Milliman of Brookfield, Wis. Claims frequency has been decreasing since the early 2000s due to multiple factors, including tort reforms and an increased focus in health care on safety and risk management, he said.

With the costs of handling a claim rising, some attorneys also are being more selective about which cases to pursue, Karls said. “They need to be more selective, because their costs have gone up, too,” he said.

Other factors contributing to declining premiums include manageable increases in the costs paid to plaintiffs, Matray said. The number and total value of medical liability payments made on behalf of physicians declined for the eighth consecutive year in 2011, according to the National Practitioner Data Bank. That means insurers are not having to pay as much to defend or settle claims as they did in the past, Matray said.

The *MLM* survey examined manual rates as of July 1 for mature claims-made policies with \$1 million/\$3 million limits for internists, general surgeons and ob-gyns.

“The industry is experiencing historically low claims frequency, and the dollar value of malpractice payments is at an all-time low,” Matray said.

As a result, the medical liability insurance market has become increasingly competitive. Many companies are offering physicians schedule credits for things such as completing risk management courses and being claims-free, Matray said. Thirty percent of companies in this year’s survey said they were offering new credits, which can significantly reduce the cost of coverage for doctors.

“The impact of this soft market for physicians is that medical liability insurers are more than ever competing for their business,” Matray said.

Companies that are members of PIAA also have been effective in recent years by utilizing strategies for better risk management and enhanced patient safety, Atchinson said. “This fact, combined with the implementation of substantive tort reform initiatives at the state level, has been instrumental in depressing claims,” he said.

However, although the number of claims being filed is declining, the severity of claims is climbing. Medical liability insurers continue to see “super losses” in the tens of millions of dollars, Atchinson said.

“It is critical to watch these trends closely, because a jump in claims frequency, combined with the continued increases in severity, could change rate and marketing conditions swiftly and dramatically,” he said.

Market expected to change

Although the current trend is good news for most doctors, it can’t continue, Karls said. If the soft market lasts too long, insurance companies will lose money, and the solvency of the coverage they offer physicians will be threatened.

Industry observers predict it will be several years before the market hardens and rates will start to rise again. “The medical professional liability insurance market goes through cyclical hard and soft markets, and that’s to be expected,” Matray said.

Even though premiums nationwide are on the decline, rates vary from state to state. Michigan is among the states that continue to have some of the highest premium rates in the country. As a result, the state has struggled to retain physicians and has shortages in many areas, said Michigan State Medical Society President John G. Bizon, MD, a Battle Creek otolaryngologist.

“We have young doctors coming out of school and choosing to start their practices in other states,” Dr. Bizon said. “As older doctors move toward retirement, this situation will have very serious impacts on Michigan residents if we can’t turn that trend around.”

Dr. Bizon attributes many of the state’s troubles to a medical liability environment that favors plaintiffs’ attorneys. The Michigan Supreme Court has reversed many tort reforms adopted in the 1990s.

Illinois has faced similar troubles. Medical liability reforms approved in 2005 were reversed by the Illinois Supreme Court five years later.

A 2010 survey of Illinois medical residents found that half leave the state after they complete their medical training. The high cost of medical liability insurance in the state was cited as a major contributing factor, said William Werner, MD, MPH, a Chicago internist and president of the Illinois State Medical Society.

“It’s a direct result of the medical liability climate that we have here,” Dr. Werner said. “The net effect is it creates an unfriendly environment for doctors.”

But tort reform opponents say restrictions such as caps on noneconomic damages infringe on patients’ rights. Charles Silver, McDonald Chair in Civil Procedure at the University of Texas School of Law in Austin, said research has shown that lawsuit restrictions imposed in Texas in 2003 drove down both claims and payouts, causing the total amount of money flowing to injured patients through lawsuits to decline by almost three-quarters.

But physicians say tort reforms on the state level have been instrumental in keeping premiums in check and helping to ensure access to care.

“While frivolous lawsuits and aggressive trial attorneys still make the legal and liability climate in America a real challenge for physicians and their patients, many states have made progress on this issue in recent years,” Dr. Bizon said. “Still, there is more that can and needs to be done.”



William Werner, MD, MPH, president of the Illinois State Medical Society

ADDITIONAL INFORMATION:

Where doctors spend the most — and least — for liability insurance

The medical liability market nationwide held steady in 2012, with overall rates dropping a scant 1.7% over the previous year. But rates that physicians pay vary greatly, depending on the state, county, specialty, insurer and plan.

Highest internist rates	2011	2012	Change
Florida (Dade County)	\$47,731	\$47,731	0.0%
Illinois (Cook, Madison and St. Clair counties)	\$40,865	\$40,865	0.0%
Michigan (Wayne and Oakland counties)	\$35,139	\$35,139	0.0%
Connecticut	\$34,700	\$34,700	0.0%
New York (Nassau and Suffolk counties)	\$33,041	\$34,032	3.0%
Highest general surgeon rates	2011	2012	Change
Florida (Dade County)	\$190,926	\$190,926	0.0%
New York (Nassau and Suffolk counties)	\$120,228	\$127,233	5.8%
Illinois (Cook, Jackson, Madison, St. Clair and Will counties)	\$127,083	\$127,083	0.0%
Michigan (Wayne County)	\$142,731	\$121,321	-15.0%
Nevada (Clark County)	\$118,125	\$118,125	0.0%
Highest ob-gyn rates	2011	2012	Change
New York (Nassau and Suffolk counties)	\$206,913	\$204,684	-1.1%
Florida (Miami and Dade counties)	\$201,808	\$201,808	0.0%
Illinois (Cook, Madison and St. Clair counties)	\$177,441	\$177,441	0.0%
Connecticut	\$170,389	\$170,389	0.0%
Nevada (Clark County)	\$168,750	\$168,750	0.0%
Lowest internist rates	2011	2012	Change
Nebraska*	\$2,381	\$2,381	0.0%
Minnesota	\$3,375	\$3,375	0.0%
South Dakota	\$3,697	\$3,697	0.0%
Wisconsin	\$3,946	\$3,946	0.0%
California (14 counties)	\$3,988	\$3,988	0.0%
Lowest general surgeon rates	2011	2012	Change
Nebraska*	\$8,095	\$8,095	0.0%
Minnesota	\$11,306	\$11,306	0.0%
South Dakota	\$12,569	\$12,569	0.0%
Wisconsin	\$13,813	\$13,813	0.0%
Kansas*	\$17,089	\$14,400	-14.0%
Lowest ob-gyn rates	2011	2012	Change
Nebraska*	\$14,286	\$14,286	0.0%
California (14 counties)	\$15,484	\$15,484	0.0%
Minnesota	\$16,449	\$16,449	0.0%
Wisconsin	\$18,154	\$18,154	0.0%
South Dakota	\$19,946	\$19,282	-3.3%

* Rate does not include payment to state patient compensation fund.

Source: *Medical Liability Monitor* Annual Rate Survey, October (medicalliabilitymonitor.com/)

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Medical Liability Monitor Annual Rate Survey, October (www.medicalliabilitymonitor.com/)