



AMERICAN ACADEMY *of* ACTUARIES

Medical Professional Liability Exposures

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This is one in a series of informational fact sheets prepared by the American Academy of Actuaries¹ Medical Professional Liability Committee and intended for use by actuaries and the public.

There are a number of different segments of the health care industry that are exposed to medical professional liability (MPL) claims.² Each faces its own unique claim exposures, which are often managed by commercial insurance products and other risk management and risk financing tools. This fact sheet discusses the exposure to MPL claims faced by individual practitioners and small group practices, hospitals and nursing homes, mid-level and allied health care providers, and managed care organizations, and the tools typically used by each to manage their exposure to claims.

Individual Practitioners and Small Group Practices

Health care providers such as physicians, dentists, and chiropractors who practice in an independent or small group setting are exposed to MPL claim risks. These health care providers primarily face claims related to alleged negligent practice, such as failure to diagnose a disease or other failure to meet the standard of care. The potential cost of these types of MPL claims varies by medical specialty because the severity of the losses resulting from adverse patient outcomes depends upon the nature of the procedure being performed.

To manage their exposure to claims, health care providers typically purchase physicians' professional liability insurance. This insurance may be obtained through an admitted insurer, an excess and surplus lines insurer, a risk retention group (RRG), or a captive insurer.

If he or she practices in an incorporated entity, the entity will also typically have an insurance policy to cover its exposure to MPL claims related to its liability for the physician's actions.

Hospitals and Nursing Homes

Hospitals and nursing homes (collectively called "facilities") principally face MPL claims stemming from allegations related to actions of staff (e.g., nurses, personal care aides), failure of procedures or equipment, or failure to supervise professional staff. When a claim is brought against a physician or other professional prompted by an event that took place in a facility setting, a claim is also often brought against the facility itself. Nursing home exposures vary depending on the level of care provided by the nursing home (e.g., skilled nursing versus assisted living), which differ from hospital exposures. General liability risks (which are usually covered under the MPL policy) are typically a broader component of nursing home risk.

¹ The American Academy of Actuaries is an 18,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

² We use this term broadly to include associated claims against facilities, corporate entities, and allied health care professionals.

The facility typically carries its own insurance policy. The insurance carrier providing coverage to the professional staff members may differ from that of the facility, particularly if the professional staff members are not employees of the facility.

Facilities often retain at least some portion of their exposure to MPL claims. The funding mechanism may be a captive insurance company or a self-insurance trust. Several otherwise unrelated facilities may form a group captive to finance claims. If they are not self-insured, facilities may utilize a large deductible policy.

“Mid-levels” and Allied Health care Providers

Nurse practitioners, physician assistants, surgical assistants, nursing assistants, etc. (referred to as “mid-levels”) and allied health care providers (e.g., dental hygienists, physical therapists) have MPL claims exposures related to the types of procedures they perform, their level of interaction with the patient, their level of authority, whether they are independent contractors and, if not, the level of oversight by a physician or surgeon.

Most often, liability coverage for the mid-level or allied health care provider is obtained through the commercial or alternative insurance markets. Such coverage can involve separate policy limits or shared policy limits with the overseeing physician or surgeon. The negligence of the mid-level is sometimes difficult to distinguish from that of the overseeing physician or surgeon. As such, most insurance companies require that, if they insure the mid-level, they also insure the overseeing physician or surgeon.

Managed Care Organizations

The term “Managed Care Organization” (MCO), as used in the United States, refers to a company structured to finance and deliver health care services under a wide range of business models. MCOs are generally characterized by a defined network of health care providers financially incentivized to efficiently provide health care services to a group (or groups) of subscribers enrolled in one or more health plans. Provider networks can be made up of any combination of physicians, allied health care providers, hospitals, and other health care facilities. Financial incentives are built into the MCO contracts to control the cost of providing health care services offered under the plan.

The level of MPL claims exposure depends on the MCO’s structure and services provided, which can range from direct employment of network providers to the provision of administrative services only (ASO). Under the employment model, MCOs are subject to the same negligence standards as any other entity providing professional health care services. Under the ASO model, the MCO’s exposure is generally limited to claims based on legal theories related to the denial of benefits provided by the health plan. In addition to allegations of direct negligence and denial of health care services, MCOs are susceptible to lawsuits alleging negligence involving the credentialing of its network providers, recordkeeping and utilization review activities, false advertising, and violation of state and federal laws pertaining to their operations. MCOs manage their claims exposure by purchasing MPL and errors and omissions insurance.

Additional Academy MPL fact sheets are available on the following topics:

[Types of MPL insurance policies \(March 2008\)](#)

[MPL reforms \(Oct. 2009\)](#)

[Death, Disability, and Retirement Extended Reporting Endorsement \(Feb. 2012\)](#)