



Group Captives Mitigating Costs of MPL Insurance

The high cost of medical professional liability (MPL) insurance can be daunting for healthcare practitioners, physicians and physicians groups. Especially as most healthcare practitioners pay the price for a very small number of negligent practitioners. Yet group captives have helped healthcare workers to keep MPL pricing stable and in some cases lower their costs.

Since the 1970s, big settlements for malpractice suits has made MPL insurance more expensive and, at times, hard to procure. According to B. Troy Winch, vice president and director of Captive Insurance at Risk Services, LLC, "Medical professional liability claims typically deal with injured individuals which can give rise to large awards, especially in the case of jury trials where sympathy can drive the final judgment amount. Additionally, given the potential for large judgments and settlements, the cost of defending MPL claims can be extremely expensive based on the complexity of the cases, multiple defendants, expert witness costs, etc."

Over the last forty years, many states have implemented tort reform in order to help lower large settlements which helps keep premium for medical malpractice at a lower rate. However, in other states MPL costs continue to rise, which can price many physicians out of practicing.

In a study published in the March edition of The New England Journal of Medicine only one percent of all physicians accounted for 32% of paid claims.

The study looked at data from the National Practitioner Data Bank from 2005 to 2014 and found that out of physicians with paid claims, 84% incurred only one claim, 16% had two and 4% had at least three. With each additional paid claim, the chances of a physician incurring another incident multiplied.

Even with information such as this study provides, all physicians are still being levied high premiums for MPL insurance. In the 1970s, in response to many healthcare practitioners being priced out of insurance, mutual insurers were formed to help them obtain insurance. The 1980s saw a crisis with general liability which led to the growth of captive insurance companies as a solution to that tight market. In the last 30 years captives have matured as a reliable form of insurance coverage and more and more physicians are looking to captives to help control the costs of their MPL insurance.

Group captives are formed by individuals or non-related organizations to be an independent entity that insures the risks of its owners. Unlike pure captives where there is one parent company owner, group captives, which include risk retention groups (RRGs), can have multiple owners and each owner is responsible for helping to control and make decisions for the captive. In the healthcare arena, group captives can be groups of physicians that band together to create a captive or it can be created between clinics and group practices or even groups of hospitals.

According to Eric W. Dethlefs, president and CEO of Cassatt RRG Holding Co., the management company for a group captive of Pennsylvania-based hospitals,

“Alternative arrangements like captives – where hospitals and physicians jointly own and manage their own medical liability risk – provide an opportunity for important cost savings. Under this arrangement, the physicians and hospitals manage their own risk and therefore, have a joint, vested interest in ensuring better outcomes for patients.”

One of the main benefits of group captives is to stabilize MPL premiums so that when the insurance market fluctuates the group members are not at the mercy of the marketplace. Gary Osborne, president of USA Risk Group said, “Group captives bring tighter control of malpractice costs and controls. The more successful ones are localized models where better tracking, restrictive underwriting and peer review on claims can have a material impact. If you merely replicate a broad national model it is less likely to succeed than a city or state level model where there is greater similarity over court rules and state practices.”

“Group captives will generally have cost advantages and lower operational expenses than the regular commercial marketplace, simply due to economies of scale,” said Dethlefs. “However, this is not the only reason they keep medical malpractice costs down.”

With ownership in a group captive comes the element of control. Dethlefs

continued, “Members will have the ability to direct the insurance program as well as network with other shareholders to enhance patient safety and risk management initiatives. Group captives will also employ a dedicated staff, who will be held accountable for results... [and can] help reduce medical practice costs with access to the reinsurance marketplace.”

According to Winch, “Through creation of a group captive, physicians gain a much greater degree of control and flexibility with respect to their medical professional liability insurance, through the ability to dictate their own underwriting criteria, policy forms, claims handlers, etc., which coupled with good risk selection and risk management can typically ultimately also drive down their medical professional liability insurance costs over time.”

Another component in successful group captives is a focus on risk management. Especially for healthcare practitioners, risk management can be a key element in mitigating risk throughout the organization. “Effective risk management can be key to reducing insurance costs for any insurance program, be it traditional market or a group captive,” added Winch. “However, in a group captive program, where the physician members have invested capital and have a stake in the programs profitability, there is a direct incentive to implement and adhere to an effective risk management program.”

When each owner of a group captive has the goal of reducing risk they are more likely to adhere to risk management policies in order to make their insurance company more successful by reducing claims. Risk management takes various forms, including continued education and training, but it begins with guidelines

established with the group captive.

According to Osborne, "Peer review has been enormously beneficial to malpractice claims. Doctors are far more likely to understand that a claim needs to be addressed and settled if a committee of local and knowledgeable colleagues indicate that the fact pattern of an incident is poor and not defensible than an insurance claim professional stating such. The professional opinion from fellow physicians is more readily acceptable."

"In addition," he continued, "The more localized model can generally allow for greater involvement in workshops and training classes. I have seen several groups successfully use these methods, often with a premium discount for attendance and implementation of new suggested processes."

With this model, incidents and claims reporting are encouraged so

that trends can be monitored and addressed. Rather than promoting a feeling of defensiveness among insureds, healthcare practitioners can approach incidents more professionally. Osborne said, "While obviously maintaining patient privacy, the ability to get a deeper understanding of claims and implement steps to address can be very beneficial."

Dethlefs referred to a recent example from his own RRG with a new member, "Prior to entry into the insurance program, the new member was actively involved in various risk management, patient safety and quality initiatives. We firmly believe that these initiatives will lead to higher quality of patient care being delivered, which will translate into lower premiums, or cost of risk, in the future."

While the benefits of a group captive can be large – both monetarily and in mitigating risk – formation of a captive should not be based on savings alone. "It is... important that the formation is not seen as an immediate cost-saver as that is also a recipe for failure. It must be seen as a cost-stabilizer with the possibility of returns if successful," said Osborne.

According to Winch, "The ability to custom design the groups insurance program typically will give rise to the immediate benefits, such as custom policy forms, streamlined underwriting process, tailored risk management programs, etc. whereas due to the long-term nature of medical professional liability insurance the financial benefits are typically seen more so over the long-term based on the group captive's results."

In fact, it can be three or more years before members see real benefits. The lag time in processing claims means that it can be several years before incident, reporting and claims patterns appear and before a customized risk management

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program can be put into effect for all group owners.

Group captives aren't a solution for most healthcare practitioners as they take a sincere commitment – both financial and time – to create. Yet, where the participants are willing it can work to everyone's benefits.

"If the past is any indication," said Dethlefs. "The Cassatt Insured Group has demonstrated that competing health systems can and should collaborate to share intelligence, risk and success. However, the model must be properly structured and well-managed for it to work."

Osborne warns, "That the biggest issue that needs to be addressed is how to remove an underperforming member. I believe that the rules for joining and leaving must be established ahead of formation and that also means addressing capital contributions and return of capital."

Any group captive formed with these things in mind should be able to significantly mitigate their risks, minimize their losses and stabilize their premiums. As Dethlefs stated, "[Group captives can] lead to increased collaboration among insureds in working towards a safer and higher healthcare environment and better outcomes to reduce the likelihood of an untoward event from occurring"

Group captives serving healthcare practitioners are continuing to grow. While specific data isn't known for group captives nationwide, RRGs (which operate under a federal law) organized to provide MPL insurance are far-and-away the largest group of RRGs.

"I would say that group captives are the present and future of medical professional liability insurance," said Winch, "As physicians and physician practices are forced to become more sophisticated insurance buyers and realize

the benefits of creating a long-term insurance solution for themselves." ■

Karrie Hyatt is a freelance writer who has been involved in the captive industry for more than ten years. More information about her work can be found at www.karriehyatt.com.



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