Current Issues and Trends in Medical Malpractice

Casualty Loss Reserve Seminar
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Columbia, Maryland
Current “Issues and Trends” in “Medical Malpractice”

• Medical Malpractice
  – Hospital Professional/Physicians Liability
  – Long Term Care Professional Liability

• Issues and Trends
  – Trends: Data based trends in frequency and severity of indemnity and expense costs
  – Issues: What is driving the trends? How are healthcare providers managing the med mal exposure?
Hospital Professional Liability – Background

Many hospitals participate in primary layers of insurance through captives, SIRs or deductibles.
- Insulation from perceived volatility of commercial market
- Lower expense load
- A way to attract employed physicians

This participation has encouraged an understanding and focus in hospital risk management
- Investment in defense and cost containment strategies
- Patient Safety initiatives
- Tort Reform initiatives
- CFO interest in changes in reserve estimates
Aon/ASHRM 2009 HPL Benchmarking Study

- Underlying Data: 81,900 non-zero claims; approximately $9.5b in reported losses; over 1,500 facilities, over 125,000 licensed beds
- Most participants are self-insurers
- 10th annual study
- Actuarial analysis of Frequency, Severity, and Loss Cost trends countrywide and in specific states
- Claim Severity is limited to $2M per occurrence
- Claim Frequency is based on “non-zero” claim count
- Exposures are “Bed Equivalents”
Key Findings of 2009 Benchmarking

• For the first time in seven years, frequency is increasing, albeit modestly.
  – NFP frequency is increasing.
  – FP frequency is decreasing to flat.

• The severity of claims (at the $2M limit) is increasing at a 4% annual rate.

• Hospital acquired conditions represent a significant portion of claims
“Never Events”

• In 2002, the term “Never Event” was coined to describe a list of 28 hospital acquired conditions that are preventable and should never occur. While original interest in “Never Events” was in the patient safety arena, Centers for Medicare and Medicaid (CMS) interest in “Never Events” was more fiscally oriented.
• CMS non-reimbursement regulations went into effect on October 1, 2008.
• CMS will no longer reimburse for a list of 10 specific hospital acquired conditions.
“Never Events” and HPL

• Current tort system is a fault based system where fault is determined by comparing the facts of the case to a Standard of Care.

• CMS has ruled that these Never Events are all preventable. So preventable in fact, that they should never happen and therefore will not be reimbursed!

• Never Events may lead to Strict Liability

• Plaintiff's bar now has an interesting angle

• Hospital may experience higher frequency and/or severity of lawsuits as a result of publicity and awareness of CMS non-reimbursement regs
Hospital Acquired Conditions

• Aon surveyed participants to see if historical losses alleging one of the 10 specific CMS regulation events were available for analysis.
• Based on the response from the survey, we were able to analyze
  – Hospital Acquired Infections
  – Hospital Acquired Injuries (fractures, dislocations, intracranial injury, crushing injury, burns and other)
  – Medication Errors in Hospital
  – Objects Left in Surgery
  – Pressure Ulcers
Hospital Acquired Conditions

- 24 percent of total hospital professional liability costs are associated with five specific hospital acquired conditions.
Frequency of Hospital Acquired Conditions

• One out of every four hospital professional liability claims is due to these five hospital acquired conditions.
Severity of Hospital Acquired Conditions

- Pressure ulcer severity is similar to overall average severity while other conditions have below average severities.

Hospital Professional Liability Benchmark Hospital Acquired Conditions
2008 Closed Claim Severity Limited to $2M per Occurrence
“Never Events” Summary of Conclusions

• Patient and plaintiff attorney attitudes toward hospital acquired conditions could change as the result of the awareness.
• Plaintiff attorneys will not stop at the 10 CMS non-reimbursement categories.
• Impact to HPL likely to show up in frequency first.
Overall Results - Loss Costs

Hospital Professional Liability Benchmark
Loss Cost per Bed Limited to $2M per Occurrence

Accident Year

Overall Loss Cost
Loss Cost Trend Line

$0
$1,000
$2,000
$3,000
$4,000

$2,640
$2,660
$2,450
$2,420
$2,550
$2,680
$2,870
$3,020

2002 2003 2004 2005 2006 2007 2008 2009
Overall Results - Frequency

Hospital Professional Liability Benchmark
Frequency per Bed

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Indemnity Claims</th>
<th>Expense Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>1.62%</td>
<td>0.97%</td>
</tr>
<tr>
<td>2003</td>
<td>1.42%</td>
<td>0.87%</td>
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<tr>
<td>2004</td>
<td>1.31%</td>
<td>0.80%</td>
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<tr>
<td>2005</td>
<td>1.23%</td>
<td>0.73%</td>
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<td>2006</td>
<td>1.20%</td>
<td>0.75%</td>
</tr>
<tr>
<td>2007</td>
<td>1.17%</td>
<td>0.80%</td>
</tr>
<tr>
<td>2008</td>
<td>1.19%</td>
<td>0.83%</td>
</tr>
<tr>
<td>2009</td>
<td>1.20%</td>
<td>0.84%</td>
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</table>
Overall Results - Severity

Hospital Professional Liability Benchmark
Claim Severity Limited to $2M per Occurrence

![Bar graph showing severity costs over years](image)
Closed Claim Results - Indemnity

Hospital Professional Liability Benchmark
Average Paid Indemnity Limited to $2M per Occurrence
Closed Claim Results - Expense

Hospital Professional Liability Benchmark
Average Expense on Claims with Indemnity Payments - Unlimited

- 2003: $37,000
- 2004: $39,000
- 2005: $49,000
- 2006: $51,000
- 2007: $55,000
- 2008: $61,000

Closing Year
Closed Claim Results - Expense

Hospital Professional Liability Benchmark
Average Expense on Expense Only Claims - Unlimited

<table>
<thead>
<tr>
<th>Closing Year</th>
<th>Expense</th>
</tr>
</thead>
<tbody>
<tr>
<td>2003</td>
<td>$8,600</td>
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<tr>
<td>2004</td>
<td>$11,600</td>
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<tr>
<td>2005</td>
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<td>2006</td>
<td>$15,800</td>
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<tr>
<td>2007</td>
<td>$16,000</td>
</tr>
<tr>
<td>2008</td>
<td>$16,200</td>
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</table>
Results by Service Line - OB

Hospital Professional Liability Benchmark
Loss Cost per Birth Limited to $2M per Occurrence

![Bar chart showing loss costs for OB service line from 2002 to 2009 with a trend line indicating increasing costs.](image)
Results by Service Line - OB

Hospital Professional Liability Benchmark
Frequency per 10,000 Births

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Indemnity Claims</th>
<th>Expense Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>8.0</td>
<td>5.5</td>
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<tr>
<td>2003</td>
<td>7.5</td>
<td>6.0</td>
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<tr>
<td>2004</td>
<td>5.7</td>
<td>4.0</td>
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<tr>
<td>2005</td>
<td>5.8</td>
<td>4.2</td>
</tr>
<tr>
<td>2006</td>
<td>4.6</td>
<td>3.4</td>
</tr>
<tr>
<td>2007</td>
<td>5.0</td>
<td>3.7</td>
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<tr>
<td>2008</td>
<td>5.5</td>
<td>4.0</td>
</tr>
<tr>
<td>2009</td>
<td>5.6</td>
<td>4.0</td>
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Results by Service Line - OB

Hospital Professional Liability Benchmark
OB Severity per Claim Limited to $2M per Occurrence

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Costs</th>
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<tbody>
<tr>
<td>2002</td>
<td>$186,000</td>
</tr>
<tr>
<td>2003</td>
<td>$248,000</td>
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<tr>
<td>2004</td>
<td>$288,000</td>
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<td>2005</td>
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<tr>
<td>2008</td>
<td>$297,000</td>
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<tr>
<td>2009</td>
<td>$309,000</td>
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Results by Service Line - ED

Hospital Professional Liability Benchmark
Loss per ED Visit limited to $2M per Occurrence
Results by Service Line - ED

Hospital Professional Liability Benchmark
Frequency per 100,000 ED Visits

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Indemnity Claims</th>
<th>Expense Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>1.6</td>
<td>3.7</td>
</tr>
<tr>
<td>2003</td>
<td>1.5</td>
<td>3.1</td>
</tr>
<tr>
<td>2004</td>
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<td>2.6</td>
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<tr>
<td>2005</td>
<td>1.3</td>
<td>2.8</td>
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<tr>
<td>2006</td>
<td>1.2</td>
<td>2.6</td>
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<tr>
<td>2007</td>
<td>1.3</td>
<td>2.4</td>
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<tr>
<td>2008</td>
<td>1.3</td>
<td>2.6</td>
</tr>
<tr>
<td>2009</td>
<td>1.4</td>
<td>2.7</td>
</tr>
</tbody>
</table>
Results by Service Line - ED

Hospital Professional Liability Benchmark
ED Severity per Claim Limited to $2M per Occurrence

![Graph showing accident year and claims cost]

- 2002: $80,000
- 2003: $121,000
- 2004: $118,000
- 2005: $130,000
- 2006: $144,000
- 2007: $147,000
- 2008: $156,000
- 2009: $162,000

Accident Year
Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark
Loss Cost per IP Surgery Limited to $2M per Occurrence

Overall Loss Cost  Loss Cost Trend Line

$100  $90  $80  $70  $60  $50  $40  $30  $20  $10  $0

2002  2003  2004  2005  2006  2007  2008  2009

$93  $81  $64  $64  $69  $68  $69  $72

Accident Year

24
Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark
Frequency per 10,000 IP Surgeries

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Indemnity Claims</th>
<th>Expense Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>2.7</td>
<td>5.5</td>
</tr>
<tr>
<td>2003</td>
<td>2.3</td>
<td>4.3</td>
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<td>2004</td>
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<tr>
<td>2005</td>
<td>1.6</td>
<td>3.6</td>
</tr>
<tr>
<td>2006</td>
<td>1.7</td>
<td>3.4</td>
</tr>
<tr>
<td>2007</td>
<td>1.7</td>
<td>2.9</td>
</tr>
<tr>
<td>2008</td>
<td>1.7</td>
<td>2.8</td>
</tr>
<tr>
<td>2009</td>
<td>1.7</td>
<td>2.8</td>
</tr>
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</table>
Results by Service Line – IP Surgery

Hospital Professional Liability Benchmark
Inpatient Surgery Severity per Claim Limited to $2M per Occurrence
Results by Service Line – OP Surgery

Hospital Professional Liability Benchmark
Loss Cost per OP Surgery Limited to $2M per Occurrence

<table>
<thead>
<tr>
<th>Accident Year</th>
<th>Overall Loss Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>$1.90</td>
</tr>
<tr>
<td>2003</td>
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<td>2004</td>
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<tr>
<td>2008</td>
<td>$3.70</td>
</tr>
<tr>
<td>2009</td>
<td>$4.00</td>
</tr>
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Results by Service Line – OP Surgery
Results by Service Line – OP Surgery

Hospital Professional Liability Benchmark
Outpatient Surgery Severity per Claim Limited to $2M per Occurrence

![Bar graph showing the results by service line for OP Surgery from 2002 to 2009. The graph indicates a trend where the severity per claim increases over time, reaching $106,000 in 2009.]
HPL Future

• Right now, the environment seems relatively stable
  – Frequency increase is mild
  – Severity increase is consistent with long term
• Areas of interest
  – Never Events
  – Overall medical inflation
  – Service line components
  – Changes to liability laws – Georgia, Illinois
  – Federal healthcare reform – demonstration projects