

C10 - Impact of ACA on Medical Professional Liability – An Update



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Insurance Physicians Expect

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Anti-Trust Notice

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Agenda

After years of speculation, we are starting to see data

- I. Where are we?
- II. Who are these new insureds?
- III. Managing expectations of the new healthcare consumer
- IV. New emerging areas of risk
- V. Impact on Underwriting, Claims and Risk Management
- VI. What does the future hold?

Where Are We?

To summarize what we know about the current healthcare environment:

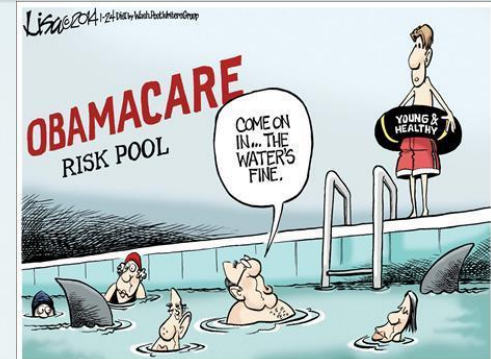
- Continued pressure on costs and delivering value
- Changed practice models (from volume to value)
- Changing population

And . . .

- *The ACA is the law*

Who are the New Insureds?

- Approx. 7 to 8 million people signed up in 2014
- *About 74% of people who signed up through federal health care exchanges were previously insured (depending on who you quote!)
- At least 22 million previously uninsured citizens will gain access to health insurance over the next few years

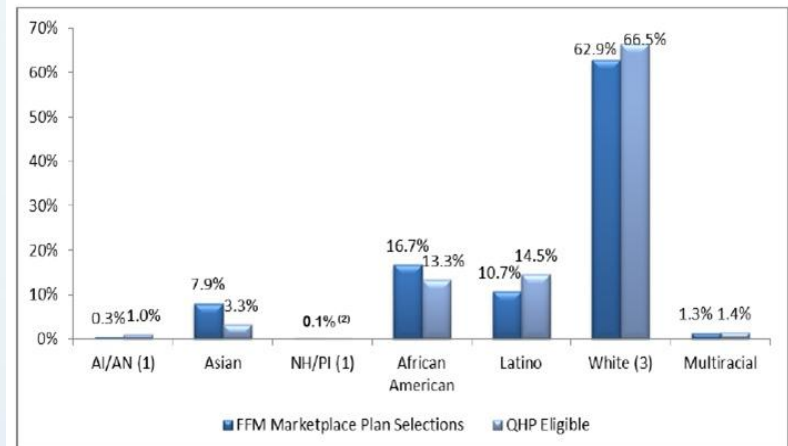


*Individual Market Enrollment:
Updated View
McKinsey&Company
March 2014

Who are the New Insureds?

- More young people than anticipated signed up
 - About 28% are in the coveted 18 to 34 age range
 - Currently about 10.7% of enrollees are Hispanics
 - 16.7% of enrollees to date are African American
 - About 12% will have serious mental health issues

Figure C2. Distribution by Race/Ethnicity of Marketplace Plan Selections and the QHP Eligible Population in the 36 FFM States, Where Race/Ethnicity Is Reported (Unknown/Other Category Is Excluded), 10-1-2013 to 3-31-2014, including Additional SEP Activity through 4-19-14



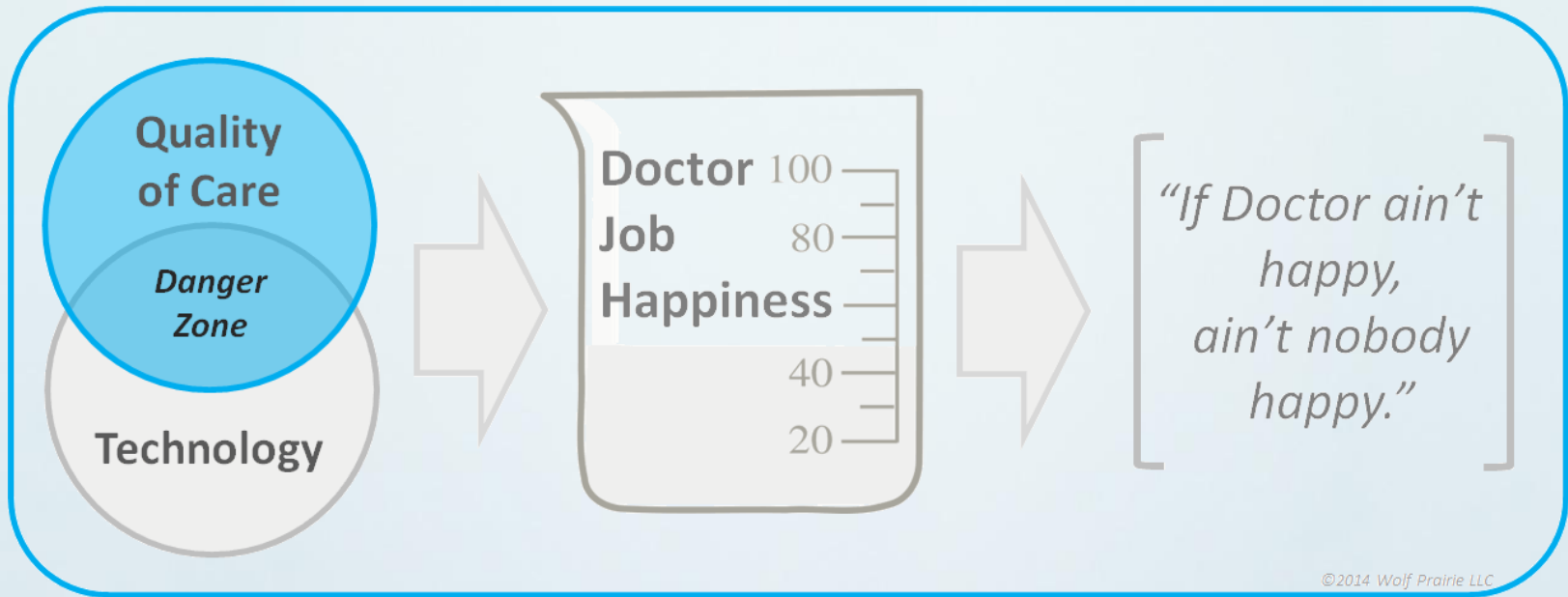
Managing Expectations of the New Healthcare Consumer

- Patient-centered models will present specific challenges:
 - Expectation of baby boomers and those who have never had health insurance will need to be met
 - Communication and education will be key
 - Newer communication tools and documents focus on younger patients
 - From communication preferences to understanding the system
 - Expectations of boomers and consumers with/without experience need to be anticipated and addressed
 - Focus on preventative and wellness care
 - In an aging population/one with chronic health problems
 - Acute care patients with limited medical history
 - Shortage of providers vs. increase in demands

Expanding Liability

- Liability is Expanding
 - Shifting care to expanded care teams
 - More groups must take risk – especially under ACOs
 - Direct corporate liability/deeper pockets
 - Managed care type exposures
- Other Liability Exposures
 - Expanded limits
 - Data/IT, cyber risk
 - Other products

Impact on Underwriting/Exposures



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Impact on Underwriting/Exposures

- Expanded care teams + Overburdened system = Changing exposures
- Implications of new innovations, such as telemedicine
 - Provider shortages leading to growth in telemedicine
 - More than one-half of U.S. hospitals now use telemedicine – growing at 10% a year
- We must ask . . .
 - How do we rate/assess new liabilities, responsibilities and exposures?
 - How do we assess additional responsibilities of care team members?
 - Do our current rating tools and techniques still work?

Historical loss experience will not be a predictor for future losses

Impact on Claims/Claim Management

Claims

- ACA requires both subjective and objective quality measures
- Consumer Assessment of Healthcare Providers and Systems (CAHPS) surveys ask patients in a very subjective way about their experience
- Who is “accountable” for failure to meet, provide care?
- Claim Management Challenges
 - Rules vs. Guidelines
 - Cooperation amongst defendants

Increase in Claims Frequency Coming?

- If current claim trends continue, we will undoubtedly see an increase in MPL claim frequency
- RAND Institute for Civil Justice says to expect MPL claims to jump by \$120 million a year in 2016
- Medical malpractice claims in Ohio hit a new low in 2012

Source: http://www.rand.org/pubs/research_reports/R493.html

The screenshot shows the RAND Corporation website interface. At the top, there is a navigation bar with the RAND logo and the tagline 'OBJECTIVE ANALYSIS. EFFECTIVE SOLUTIONS.' followed by links for 'About', 'Support RAND', 'Newsroom', and 'Events'. Below this are menu items for 'RESEARCH', 'LATEST INSIGHTS', and 'POLICY EXP'. The main content area features the title 'How Will the Patient Protection and Affordable Care Act Affect Liability Insurance Costs?' in a large, bold, purple font. Below the title, it lists the authors 'by David I. Auerbach, Paul Heaton, Ian Brantley' and provides 'Related Topics' including 'Automobile Insurance, Health Care Reform, Health Insurance, Insurance Liability, Medical Malpractice, Patient Protection and Affordable Care Act, Workers' Compensation'. There is a 'View related products' button with a downward arrow icon. Below that are social media sharing buttons for 'Recommend' (55), 'Tweet' (28), and 'g+1' (10). The 'Abstract' section begins with the text: 'The Patient Protection and Affordable Care Act (ACA) will greatly expand private coverage and Medicaid while making major changes to payment rates and the health care delivery system. These changes will affect traditional health insurers, individuals, and government payers. In addition, a considerable amount of health care is paid for directly by or is indirectly paid for via legal settlements after the care occurs, by liability insurers. This report identifies potential mechanisms'.

Game Changer

The \$64,000 question - Will Tort Reform apply?

- Gold Standard – MICRA in CA on ballot for 11/2014
- Several states moving to reverse/modify medical malpractice caps
- We don't know if efforts will succeed
- Uncertain and changing – potentially unravelling



Source - <http://www.healthleadersmedia.com/page-2/FIN-303849/State-Medical-Malpractice-Caps-Under-Fire##>

Impact on Risk Management

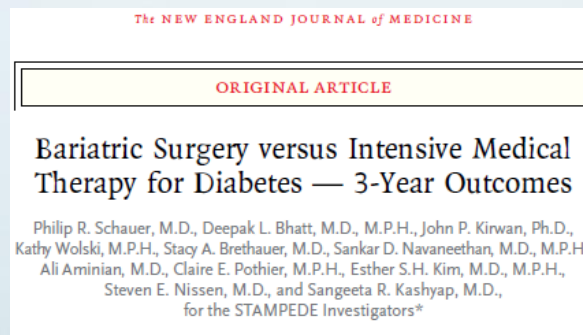
Risk Management

- Risk management more important than ever – using data to drive change
 - Promote Quality, Patient Safety & Patient Satisfaction
 - Assist in training and Quality Assurance
 - Develop early intervention and resolution

Example: Risk Management to Address Bariatric Surgery Risks

What can we do to assist our insureds - an industry example

- According to NEJM, there will be a 75% increase in bariatric surgery; due in large part to recognition of value in managing diabetes
- Many of these patients present high risk profiles – often have other comorbidities
- Potential for untrained to try to take advantage of this trend
- Support programs that provide surgical excellence and tailored risk management services to assist best outcomes



What Does the Future Hold?

- Data or tools from the past have to be tweaked for use in the future



- Our new world requires new approaches
- Listen to our insureds to meet our challenges

Presenter Bio

**Elke Kirsten-Brauer, Dipl. – Kfm.
EVP/Chief Underwriting Officer for
MGIS Underwriting Managers, Inc.**



- MGIS (www.MGIS.com) and Freedom Specialty Insurance Company, a Nationwide Insurance Company (www.Freedomspecialtyins.com), partnered to provide MPL coverage to physicians, surgeons, and medical groups. Its physician-focused underwriting allows them to offer premier products at a competitive price.
- Kirsten-Brauer is a seasoned and proven leader in insurance/reinsurance and program business with extensive experience in the complex professional liability and medical malpractice market.
- Her extensive background stems from leading positions with carriers (MMI Companies, Inc., now part of Travelers), reinsurers (Hannover Re, Cologne Re Group), underwriters, and risk management service providers.
- She is a member of PLUS and serves on the SW Chapter Steering Committee
- She is a frequent author and lecturer on topics related to ACA and MPL
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