



COVERAGE INSIGHTS



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Professional Liability Insurance Trends in the Health Care Sector

Often referred to as medical malpractice insurance in the health care industry, professional liability insurance can provide financial protection for losses stemming from a patient alleging that errors, negligence or mistakes in a medical professional's services resulted in damage or injury. Over the past few years, several shifts in the health care sector have increased the frequency and severity of medical malpractice claims. Amid these difficult conditions, recent research found that most health care organizations have been encountering significant medical malpractice premium hikes for multiple years, with some organizations even experiencing double-digit rate increases.

Considering these conditions, it's crucial for health care organizations to better understand sector developments currently impacting the professional liability landscape and take steps to minimize their potential exposures, thus reducing the likelihood of claims and associated costs. This article outlines key industry trends contributing to medical malpractice claims and provides related risk mitigation strategies.

Industry Trends

A variety of developments in the health care sector have been affecting the frequency of professional liability claims, such as the following:

- **Labor shortages**—The last few years have seen widespread worker shortages. Several factors have played a role in these labor gaps. Primarily, the lasting ramifications of the COVID-19

pandemic have motivated many workers to reevaluate their employment priorities. As a result, a growing number of workers have been leaving their jobs in search of more fulfilling roles, such as positions in different career paths or those in the same industry with greater compensation and benefits; on the other hand, some employees have been exiting the workforce altogether. In the health care sector, such shortages have made it increasingly difficult for organizations to retain medical staff. As such, many health care organizations have attempted to fill these labor gaps by increasing their existing employees' workloads (e.g., giving physicians extra patients, having nurses work longer shifts or making pharmacists take on more administrative tasks). Yet, overworked and burned-out medical staff may be more prone to making mistakes (e.g., incorrect diagnoses, medication mishaps or surgical errors), subsequently paving the way for professional liability claims.

- **Social inflation issues**—In general, social inflation refers to societal trends that influence the ever-rising costs of insurance claims and lawsuits above the overall inflation rate. One of the main drivers of social inflation is the continued surge in nuclear verdicts (jury awards exceeding \$10 million). In other words, stakeholders are holding organizations more accountable for their



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perceived shortcomings in the courtroom, with an increased willingness to demand large-scale payouts. Health care organizations are no exception to this trend. This means that patients are more likely to take legal action against these organizations for errors, negligence or mistakes (whether actual or alleged), ultimately resulting in medical malpractice claims. What's worse, if these claims lead to nuclear verdicts, health care organizations could experience major financial losses and possible underinsurance issues. In fact, the latest industry data found that nuclear verdicts in the medical malpractice space have more than tripled in the past decade, prompting a 55% increase in average claim costs.

- **Telehealth concerns**—Telehealth consists of the facilitation of medical treatment and services via digital communication methods, such as text messages and video calls. While telehealth options were available before the pandemic, they jumped in popularity over the last few years as a growing number of individuals began seeking virtual care. Although telehealth can provide patients with timely and simplified treatment access and allow health care organizations to expand their medical services, virtual care also presents professional liability concerns. Namely, telehealth can make it more challenging for health care organizations to ensure consistent treatment standards and expectations across in-person and digital services, as social cues may vary between these mediums. Further, because telehealth visits don't permit medical professionals to conduct physical examinations, they could miss out on crucial patient information while providing virtual care, possibly resulting in misdiagnoses, delayed treatment and subsequent professional liability claims. Compounding concerns, telehealth regulations regarding data privacy and protection are constantly changing, carrying potential medical malpractice exposures for health care organizations that fail to comply with this legislation and cause injury or damage to their patients as a result.

Risk Mitigation Strategies

In light of these industry trends and their impacts on the professional liability environment, it's best for health care organizations to implement the following strategies to help mitigate their exposures and avoid possible medical malpractice claims:

- **Adopt effective retention initiatives.** By retaining employees and avoiding understaffing issues, health care organizations can increase their likelihood of providing error-free services to patients, reducing related professional liability concerns. Popular retention initiatives include increasing wages, giving bonuses and additional time off, allowing tuition and child care reimbursement, implementing flexible scheduling, establishing remote or hybrid options and offering well-being programs.
- **Promote a culture of safety and communication.** Health care organizations should prioritize creating policies and procedures that promote a culture centered around patient safety and honest communication. Specifically, organizations should encourage their employees to foster open dialogue with patients, ask plenty of follow-up questions, pay attention to both verbal and nonverbal social cues, and ensure patients receive the information and resources necessary to provide informed consent to medical services, especially when conducting telehealth visits. In doing so, health care organizations can limit miscommunication and associated treatment errors, thus keeping medical malpractice claims at bay.
- **Establish solid documentation protocols.** In addition to upholding open communication with patients, health care organizations should be sure to clearly document this dialogue and require employees to take detailed notes during patient interactions, allowing them to follow proper standards of practice for medical diagnoses and make evidence-based treatment decisions. This documentation can also help refute allegations that errors were made during medical services. Further, health care organizations should



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document all patient complaints and take these matters seriously, investigating and remedying such concerns as quickly as possible to minimize related medical malpractice claims. By regularly reviewing and analyzing this data, health care organizations can also identify any treatment patterns that may be contributing to professional liability issues and adjust their medical services as needed to mitigate future claims.

- **Provide in-depth employee training.** Health care organizations should develop comprehensive employee training programs that give medical staff the resources and knowledge required to uphold proper patient safety, communication and documentation measures. This training shouldn't be a one-time occurrence; rather, medical staff of all experience levels should receive ongoing education and oversight, with health care organizations monitoring employees' work and taking all possible steps to correct errors before they go on to affect patients and lead to professional liability claims.
- **Maintain compliance.** As the regulatory space surrounding telehealth and data privacy and protection continues to shift, health care organizations should consult legal counsel to ensure continued compliance with applicable legislation, revising associated policies and procedures when necessary and reducing possible professional liability claims.
- **Purchase sufficient coverage.** Health care organizations should regularly review their professional liability risks and adjust their coverage as needed to ensure adequate financial protection following potential medical malpractice claims. Organizations can consult trusted insurance professionals to discuss their coverage needs.

Conclusion

Amid emerging industry trends and today's evolving professional liability landscape, it's important for health care organizations to stay up to date on the latest developments and take appropriate measures

to help prevent medical malpractice claims. By keeping themselves informed and adjusting their risk management strategies when necessary, health care organizations can effectively navigate this ever-changing environment.

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