Physicians professional liability limits

How much is enough?

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The year 2020 has provided enough to keep health care professionals, practice managers and hospital administrators up at night. Potential pending litigation and financial hardship stemming from COVID-19, coupled with increasing claim severity, illustrates the short- and long-term issues that weigh on their minds. According to Willis Towers Watson actuarial data, claims over $1M have nearly doubled since 2000, and underwriters are not optimistic that immunities will hold in the states that have them. With all the unknowns, many clients are asking, "How much limit do I need so that I can sleep at night?"

Statutory/required limits

In some states, there are statutory requirements or guidance, to help answer the question of what limits to purchase. However, states with laws or guidance governing malpractice limits may also simply require a provider to purchase coverage or indicate that coverage must be placed with an approved insurer. In some states, limits are driven by credentialing requirements in hospitals, while others lack a coordinated driving force behind what limits are purchased. To illustrate this diversity, a state such as New York has established limits of $1.3M/$3.9M in order to qualify for state provided excess coverage, while limits in Virginia adjust upwards by $50,000 each year due to statute.[1] The process to establish limits is a balancing act between laws that are on the books and transfer of risk in a way that makes the buyer feel comfortable.

Consider a fictitious health care practice in Cincinnati that also has locations in Indiana and Kentucky. Each location will have completely different laws and requirements governing what coverage to purchase. The Ohio location will likely have $1M/$3M limits, because most hospitals require at least those limits for privileges; the Indiana location is likely subject to the Patient Compensation Fund, and the Kentucky location is in a venue that some insurers may consider riskier than the other states. The exact same procedures and protocols could be in place at all three locations, but are viewed differently due to the physical location of the practice.

The lesson in the above example is that there is no one-size-fits-all answer to the question on what appropriate limits should be purchased. An insurance buyer should have a conversation with their trusted insurance professional to discuss what is best for their specific situation. For instance, is the practice primarily a surgical specialty that experiences higher severity on claims?

Does the practice have a loss history that would indicate a need for more or less limit? Are there contractual requirements to consider when making the purchasing decision? All of these considerations will drive the discussion on what limits to purchase.

Patient compensation funds

If a provider or practice renders services in a state that has a patient compensation fund (PCF), special care and consideration must be taken to ensure that coverage is adequate. Eight states have an active PCF: Indiana, Kansas, Louisiana, Nebraska, New Mexico, Pennsylvania, South Carolina and Wisconsin. Kansas, Pennsylvania and Wisconsin have mandatory participation in their PCF. Typically, a PCF will have an underlying limit requirement, and then the PCF will offer additional limits at that attachment point. In addition, each PCF has its own unique rules governing who can enroll, whether individual limits are required, and if defense costs can erode the limit. A partnership between a client and an insurance professional is essential to be sure that coverage is in compliance and will not jeopardize the provided PCF coverage.[2]

Telehealth

One by-product of the global pandemic caused by COVID-19 has been the explosion of the use of telemedicine. While shelter-in-place orders demanded that patients stay in their homes, it did not lessen the need for providing health care. This also has an impact on what limits should be purchased and places additional strain on a practice's credentialing process. If a provider has an out-of-state patient, they must be sure that insurance coverage matches required limits and that licensing issues are dealt with appropriately. Many states require a provider to obtain a license to treat patients via telemedicine within the state where the patient resides. While waivers have been issued to alleviate some of the licensing requirements during the pandemic, a provider still needs to comply with the individual state regulations and remain aware of the expirations of any applicable waivers. Another telemedicine effect to consider is the claims venue. A provider should be cognizant of attracting exposure from a patient living in an area that is more plaintiff oriented.

Limit structures

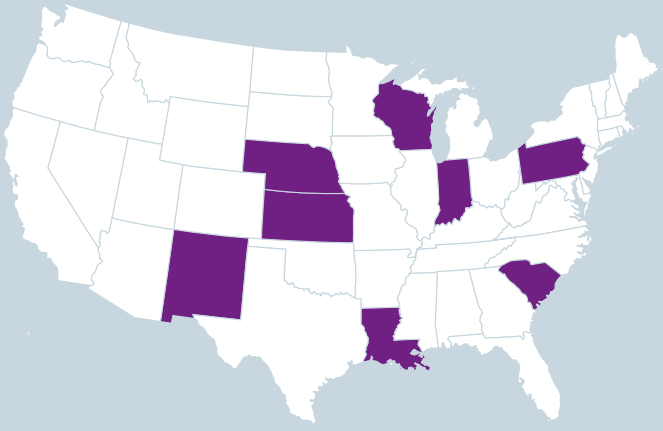
Sometimes creating a unique limit structure can be a way to balance cost versus coverage. For instance, if a practice does not need or is not required to have an individual limit, perhaps a shared tower among all providers may be an option. Should a provider need an individual limit, a practice could explore an individual primary limit with a shared excess limit. Typically, a shared blanket limit is less expensive than purchasing individual limits. However, these structures do not come without issues. If you have a shared limit, one provider's poor loss history impacts the entire group and can negatively impact those with better loss history. In addition, while a shared limit can provide short-term relief to a practice regarding extended reporting (or tail) coverage for individual physicians, if the entire shared limit needs to be tailed out, the price can be higher.

Conclusion

Structuring of insurance limits involves a more technical discussion and is not as simple as reviewing state requirements. The good news is that there are many creative strategies for addressing amount of limit, as well as deductibles/retention options, extended reporting periods (tail), and retroactive dates. Actuaries, attorneys, state associations and insurance professionals can all assist in determining the most effective program structure for a particular scenario. Choosing partners that specialize in health care will ensure that your risk and insurance program not only complies with applicable regulations, but also provides for the most efficient design for your organization.

PCF States

- Indiana
- Kansas
- Louisiana
- Nebraska
- New Mexico
- Pennsylvania
- South Carolina
- Wisconsin



Source: OLR Research Report. Medical Malpractice Patient Compensation Funds. https://www.cga.ct.gov/2003/olrdata/ins/rpt/2003-R-0742.htm#:~:text=Eight%20states%20have%20active%20patient,%2C%20South%20Carolina%2C%20and%20Wisconsin.

Sources

[1] MLMIC Insurance Company. https://www.mlmic.com/physicians.

[2] American Medical Association. State Patient Compensation Funds. https://www.scribd.com/document/181171839/AMA-state-Patient-Compensation-Funds

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