

Practices Still Scrambling to Reduce Malpractice Costs

The incidence of malpractice claims has stabilized in recent years. Although claim severity has inched upward, malpractice premiums have also been relatively stable since 2005.

If the number of malpractice claims and premiums has stabilized then why are malpractice costs still a problem? The fact is that many practices are still reeling from the large premium increases that took place between 2000 and 2005 when the carriers were experiencing financial difficulties. Many specialties are now paying malpractice premiums that are more than double what they paid in 2000. (See chart.)

Adding to malpractice premium woes, many of the credits and dividends which once softened the effect of higher rates have all but disappeared. The net result is that high premiums combined with increasing operating costs are a major concern for medical practices throughout Massachusetts.

Taking Charge of Your Malpractice Program

When it comes to malpractice insurance, too many practices assume that their only role is to pay the invoice. This is a big mistake. Taking control of your malpractice program does require some work and

in the end, it may not always result in financial success. Yet a surprising number of practices can and do substantially reduce their malpractice costs once they start looking deeper, asking questions and making decisions.

A big part of taking charge means gaining knowledge about your coverage. The place to start is making sure your malpractice premiums are correct. The policy face sheet or Declarations Page provides little insight about how the bottom-line premium was determined. Here you will need a skilled ally — typically a broker that knows malpractice insurance thoroughly and can do a policy and cost analysis. The skilled broker will also look for policy errors which can be very costly and are far more common than most people realize.

Understanding your practice's hidden strengths can help lower malpractice costs. A good claims history is like a good credit rating. As you know, when seeking a mortgage, customers with an excellent credit rating are in a stronger bargaining position. The same holds true for practices that have good claims experience — they will have a much better chance of lowering their premiums. A good claims

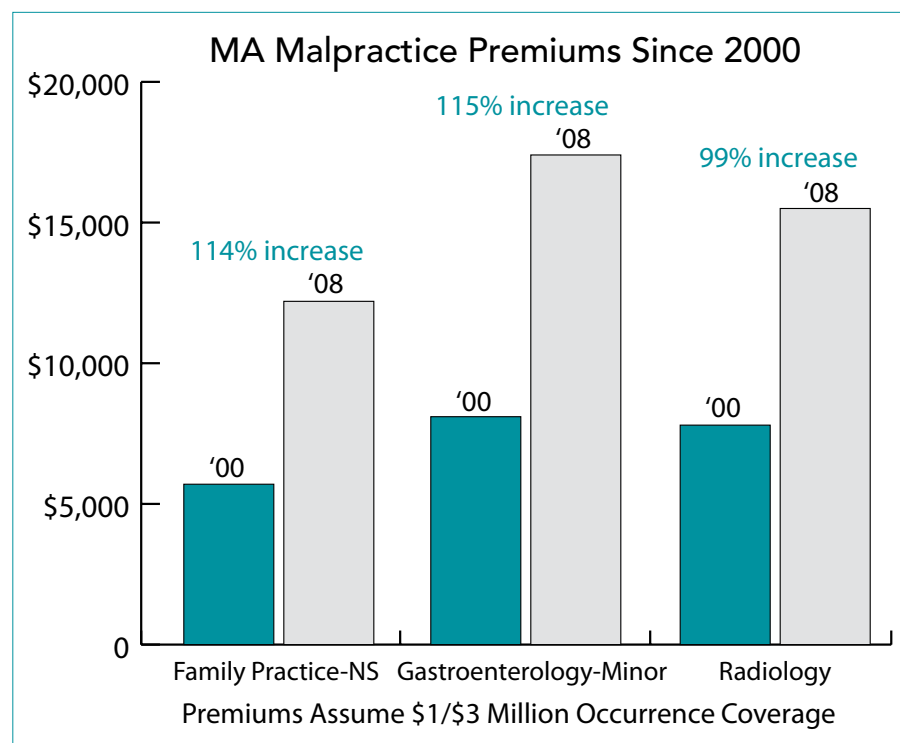
history will also open up opportunities to consider alternative carriers.

You should look into the new Modified Claims Made coverage that has recently become available in Massachusetts. Unlike traditional Claims Made coverage, Modified Claims Made has the tail cost built into the policy, similar to Occurrence, yet the premiums can be thousands less. Modified Claims Made is one of the fastest growing trends in Massachusetts malpractice

products and you owe it to your practice to learn about it. (See *Advantages of Modified Claims Made*, page 2.)

In the end, the practice that takes control of its malpractice program will be the one that spends less and gets more for its hard-earned dollars. Let that practice be yours.

For more information or for a review of your policies, please call (800) 522-7426. ■

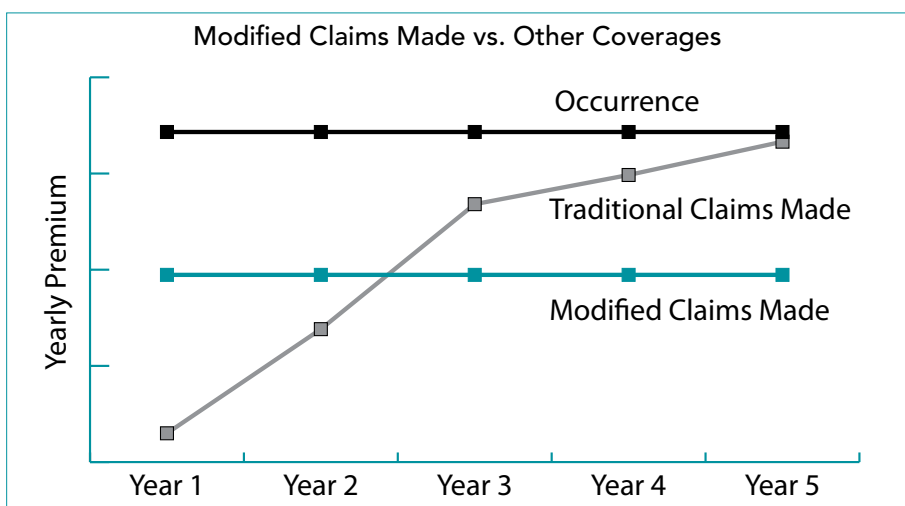


Advantages of Modified Claims Made

Last year the Connecticut Medical Insurance Company (CMIC) developed a new type of malpractice insurance called MQI. It was created for groups of three or more physicians with superior claims histories and provides eligible groups with substantial savings over ordinary malpractice insurance. MQI is based on a type of malpractice coverage called **Modified Claims Made**. This coverage has the “tail” costs built in, similar to occurrence, and can also provide coverage for prior acts. With modified claims made coverage, physicians never have to pay for a tail. MQI premiums tend to run on average about 30% less than typical occurrence malpractice rates for

most specialties. The enclosed chart demonstrates the premium structure of modified claims made in comparison to ordinary occurrence and traditional claims made.

MQI has several physician friendly features including a “consent-to-settle” clause. This special clause means a claim will not be settled without the physician’s consent. CMIC also offers various payment plans with no additional finance charge. Numerous Massachusetts medical groups have discovered the benefits of modified claims made coverage. The combination of pre-paid tail and lower premiums is a great fit for practices looking to lower their malpractice costs. ■



PIAM Malpractice Bulletin is a publication of Physicians Insurance Agency of Massachusetts (PIAM), a subsidiary of the Massachusetts Medical Society. PIAM is located at 860 Winter Street, Waltham, MA 02451. Phone: (800) 522-7426 Fax: (781) 434-6929 Web site: <http://www.piam.com> E-mail: piam@mms.org

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Trends in Medical Malpractice Claims

In the past ten years, there has been a decrease in the number of medical malpractice cases filed but an increase in the severity of the damages claimed. This trend continued during the past year but recent Massachusetts medical malpractice appellate decisions expand the type of situations where allegations of malpractice might be pursued.

The first decision considered a physician’s responsibility to third parties when the third party is injured by a patient due to the effects of a medication prescribed by the provider. The Court concluded “that a physician owes a duty of reasonable care to everyone foreseeably put at risk by his failure to warn of the side effects of his treatment of a patient”. This decision expanded the scope of the provider’s legal responsibility beyond just the immediate doctor/patient relationship. As the duty is to inform the patient of the possible side effects of a medication, such as dizziness or drowsiness, providers should document in their record, either by pre-printed instruction sheets or written notation in the patient’s chart, the instructions that were provided.

A second opinion considered the “loss of chance” doctrine. A number of other states had already recognized that a patient could assert a claim for medical malpractice damages due to a delay in diagnosis even if the chance of cure would have been less than 50% had the diagnosis been made sooner. The Massachusetts Supreme Court reasoned that it was endorsing loss of chance to “ensure that the fundamental aims and principles of our tort law remain fully applicable to the modern world of sophisticated

medical diagnosis and treatment.” There were two cases considered by the Court, one of which considered a failure to diagnose gastric cancer and another that concerned a failure to diagnose breast cancer. In loss of chance cases, the jury would have to find that there was a negligent delay in diagnosis which diminished the patient’s chance for survivability of the disease. The jury would then first determine a total damage amount and reduce that by the difference between the percentage chance of survivability when the diagnosis should have been made and when it was actually made. For example, the amount would be multiplied by 28% if the chance of survivability diminished from 50% to 22% during the delay.

Overall, these cases might not have a dramatic impact upon the number of suits being filed but should encourage an evaluation of current office practices and diagnostic procedure protocols. ■

DUTY TO WARN

A provider owes a duty to his patient to warn of possible side effects of treatment and is responsible for damages suffered by a third party due to his failure to adequately inform the patient

LOSS OF CHANCE

An example: the damage amount would be multiplied by 28% if the chance of survivability diminished from 50% to 22% during the delay.

– Frank E. Reardon, Esq.
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CLIA Paves the Way for Lab Testing In the Practice

PIAM recently added Cardinal Health to its list of PIAM Practice Services. Cardinal Health is a major provider of medical practice equipment and supplies. In this article, Cardinal Health discusses the emergence of the new “point-of care” lab testing equipment for the practice.

Getting timely lab results creates major challenges for many practices. The process of scheduling lab tests, following up with patients and getting positive results re-tested takes extraordinary amounts of practice resources and time. A potentially attractive new solution has emerged to help physicians deal with these challenges — in-office Clinical Laboratory Improvement Amendments (CLIA)-Waived testing. An increasing number of in-practice or “point-of-care” testing devices have been “waived” by CLIA, enabling practices to conduct their own lab tests on-site. Many of these tests are reimbursable by Medicare.

Testing and getting results while the patient is sitting in the exam room may seem like a dream come true to many practices. Today the dream is becoming more of a reality. For example, CLIA-Waived analyzers such as the Roche CoaguChek XS and the Siemens DCA Vantage can improve quality of patient care by providing results within minutes. The Roche CoaguChek enables the

monitoring of coagulation (PT/INR) status. The DCA Vantage is a point-of-care immunoassay analyzer testing Hemoglobin A1c for diabetes management. Re-testing for positive results takes place immediately.

In Massachusetts, the Medicare reimbursement rate for an A1c test is \$14.17. By performing this standard test and others, the physician receives instant lab results while the patient is in the office. For example, when testing for PT/INR in-house, the patient will receive the results in about a minute instead of waiting several days for an answer. This makes for better use of physician time and contributes to improved quality of care.

Patients appreciate the swift diagnosis because physicians will be able to answer their questions on the spot about treatment for their illness. This greatly reduces patient anxiety and provides the opportunity for face-to-face communication about current health conditions. Taking the next step, the practice can establish a health program that features CLIA-Waived testing. This enables the practice to be proactive, not reactive, when treating patients.

Cardinal Health has a broad portfolio of laboratory analyzers that are classified in the moderate and high

complexity levels of laboratory tests. Currently there are two analyzers that specialize in performing Chemistry analytes on a CLIA-Waived FDA clearance. The Abaxis Piccolo is capable of performing a number of different profiles including Complete Metabolic Profiles, Basic Metabolic Profiles, Renal Profiles and others. The Abbott I-Stat has also been cleared to perform a Chem 8 profile consisting of Sodium, Potassium, Chloride, CO₂, Glucose, Bun, Creatinine, Ionized Calcium and Hemoglobin. A custom solution can be developed for practices seeking specialized testing capabilities that closely match their clinical needs.

A dedicated regional lab manager can answer a full range of lab questions on CLIA-Waived products and also provide innovative ideas for ways to streamline internal processes like ordering products and managing supply inventory.

Please contact Leo Proppe Jr. at Cardinal Health at (800)456-1894 ext. 7716 to set up a time to discuss lab opportunities within your practice. More information about the PIAM and Cardinal Health partnership is available online at www.cardinalhealth.com/piam. ■

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PIAM Announces New Liaison With Aflac™

PIAM has partnered with Aflac™ to offer a special injury and illness insurance program to group practices.

Benefit Highlights from the Employer's Perspective:

- Zero cost to the Employer
- No changes – Aflac Does NOT change or replace any existing benefits
- Employer saves money, since most plans qualify for pre-tax deductions thereby reducing FICA tax
- Billed in arrears – premium payments not due until after employee deductions have been made
- Easily implemented with virtually no administration
- Minimal participation - only 3 policies purchased qualifies a group (could be on one person).

Benefit Highlights from the Employee's Perspective:

- Allows employees the option to protect themselves and their family from the potentially devastating financial losses that come from an injury or illness
- Pays cash directly to employees regardless of any other insurance
- Portable – policies are employee owned, with no rate increases
- Convenient – premiums deducted from paychecks
- Cost Savings – most premiums are paid with pre-tax dollars
- Affordable – most plans start as low as \$3-\$5 per week before taxes, and are available at group rates
- No annual rate increase

If you would like more information please call PIAM at (781) 434-7288 or go to www.piam.com. ■



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Exclusive Offer: Discounted Individual Disability Insurance for MMS Members

With a difficult economy, your income has become even more important. Over a lifetime, a physician's ability to earn a living is usually his or her biggest asset. Disability insurance protects this critical asset throughout the working years. Other assets, such as home, business, 401(k) and retirement savings, bank accounts, and maybe a vacation home, may amount to only a quarter of your overall assets. You insure all of these things, but have you adequately insured your income?

PIAM has arranged exclusive discounts with several major disability insurers to provide reduced cost disability insurance to Massachusetts Medical Society members. Savings on individual coverage can be as high as 40% and these savings can be especially beneficial for female physicians. MMS Members can

build their career earnings safety net and do it using their own exclusive and discounted disability program.

The coverage is "own occupation" guaranteed non-cancelable coverage that you own. The policy you purchase while you are a member of the MMS stays in force at the discounted rate, as long as you pay your premiums on time. Here are some examples of physicians who saved:

- Radiologist, female, 36, coordinated new coverage to existing group, saved 45%
- Urologist, male, 43, improved coverage on existing policy, saved 44 %
- OB-GYN, female, 52, stopped her escalating premiums, improved her coverage and saved 46% over her existing top name policy

Rates are available only through this special membership discount.

Policies can be customized with all optional riders. Some doctors may wish to maximize their disability protection even further. Most insurers are willing to insure about 60% of a physician's monthly income up to a maximum level. This level varies from \$15,000 to \$22,500 per

month depending upon carrier. For more information, call (800) 522-7426 or email piam@mms.org. ■

Coverages under this program are offered by several companies. To inquire and get additional details, costs, exclusions, limitations, underwriting requirements and other specifics about the terms of these programs as well as discounts, please contact PIAM.

