Medical Liability Insurers Working with ACOs May Need to Reevaluate Reinsurance Programs

Rockville, MD – February 26, 2013 – New insurance risks, with their associated financial risks, are major considerations for all of the parties operating in the new accountable care organization (ACO) environment, according to a panel of experts who participated in a recent webinar presented by the Physician Insurers Association of America (PIAA).

The webinar, which took place on February 6, featured an actuary, an attorney, and a consultant who specialize in medical professional liability (MPL) coverage and offered practical tips for working effectively with ACOs.

The presenters noted that a new reinsurance structure may be essential for ensuring adequate coverage for insured professionals and the institutions they work with that are in ACOs.

James Saxton, Esq. of Stevens and Lee stressed how little we really know about ACOs, at this point: “There is this rush, to create these organizations, and yet there’s not really any hard data to show how well they are going to work or how dramatic the changes in healthcare delivery may be. Clearly we will have new partnerships, some virtual and some contractual, responsible for the care of this ever increasing population of patients.”

Yet, he says, the provider community now realizes that ACOs have become inevitable, and that “they can no longer afford anymore to sit on the sidelines. The changes are being felt by the entire provider community.”

James Hurley, an actuary with Towers Watson, identified new risks in the ACO market. “There is an expansion in the covered population, the higher expectations that come with the increased population, the delegation to less skilled providers, and the fact that there will be fewer providers generally.” He cautioned, “That doesn’t set a very good stage for what the role of traditional MPL might be like, as we go forward.”

The ACO environment may see new kinds of lawsuits such as those resulting from the expansion in scope of practice of allied health professionals. Hurley noted that this is still new and difficult
territory: “It seems like there are now more opportunities for more negligence actions. The question is whether they will translate into paid claims.”

With these unknowns in play, Hurley advised, “[Reinsurers and Insurers] will need to provide combined coverages for ACOs, craft wording that works for them, and have higher vertical limits in dollar amounts of coverage. When you put all these things together in a combined entity, the limit needs are going to go up.”

Changing coverage circumstances and combined exposure across the spectrum of providers should prompt a reassessment of reinsurance needs. In the area of limits, Hurley stressed, “Companies will need to see if their reinsurance structure should be adjusted, to accommodate the new higher limits.”

Paul Greve, Executive Vice President with the Willis Health Care Practice, also stressed “the need for higher limits, going forward, in this new era.” Insuring hospitals and health systems is distinct from insuring individual physicians, he said. “They will have a different attitude toward settlement of a suit. They can’t always go to the mat in every case, because they want to avoid the media focus. They are going to expect a joint defense and a collaborative defense.”

Greve noted the non-MPL exposures in the ACO sphere, “like D&O, cyber-risk, network privacy, potentially greater enforcement of fraud and abuse, and regulatory risk exposure.” Reinsurance may have an important role to play with these risks, too, Greve stated.

Perhaps the biggest risk in operating an ACO, Greve said, is the financial risk that these ACO organizations are taking on. This factor, too, may require serious consideration of a new reinsurance program for an MPL insurer looking to enter or expand its role in the ACO marketplace.

The webinar was the second in a series in 2013 for PIAA members. For more information on the webinar series, visit the PIAA website at www.piaa.us and click on “PIAA Webinars” in the Meetings and Education section.

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