provisions

When comparing carriers and MPL expertise...

Do you see a difference that makes a difference?

"If you don't have a competitive advantage, don't compete."

Jack Welch
former CEO
General Electric

Direct premiums written for the MPL composite was up 1.1% in 2020 to

$7.9B

after increasing by 4.3% in 2019 and by 2.6% in 2018.
AM Best Market Segment Report

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A Word from Mike Rosenthal

The Differences that Make a Difference

Google the term "changes in healthcare" and the outcome is 1.14 billion results. To say that healthcare is changing is an understatement. Add that to an uncertain medical professional liability market and you get an environment that requires true expertise and specialization. The question is what differences let you know that you are working with a partner that has that expertise and specialization? Here are a few for your consideration.

Understanding the Markets

Your partner needs to understand how medicine is changing, how the courts are changing, and the direction of the regulatory environments in 50 different states. ProAssurance spends considerable resources and time ensuring that we are prepared. Policies are written to cover changing healthcare delivery models, defensive strategies meet changing court decisions, and your client's coverage continues to be appropriate for the regulatory environment in which they are practicing.

Creating Innovative Solutions

There are many models used for the delivery of medical services, and technology is constantly introducing new options. ProAssurance's blending of regional and product line expertise allows us to be flexible and provide you with the solutions your clients need. Whether it's the need to provide different types of coverage under one umbrella or provide coverage across multiple states or regions, ProAssurance has a solution that will work.

Maintaining Stability

Professional liability insurers writing long-tailed lines of business require a high level of financial oversight to ensure that your clients' coverage will be there when they need it. As part of a publicly traded company, ProAssurance must meet a higher standard of financial management and transparency due to regulatory requirements and additional evaluation by analysts and sophisticated investors. This creates an additional level of oversight that can produce a level of confidence that other models do not share.

At ProAssurance, we are always working to be your carrier of choice with a consistent focus on those items that create a meaningful difference. Contact your Business Development Representative today to see how our differences can better position you to solve your clients' needs.

Mike Rosenthal
Senior Vice President, Business Development

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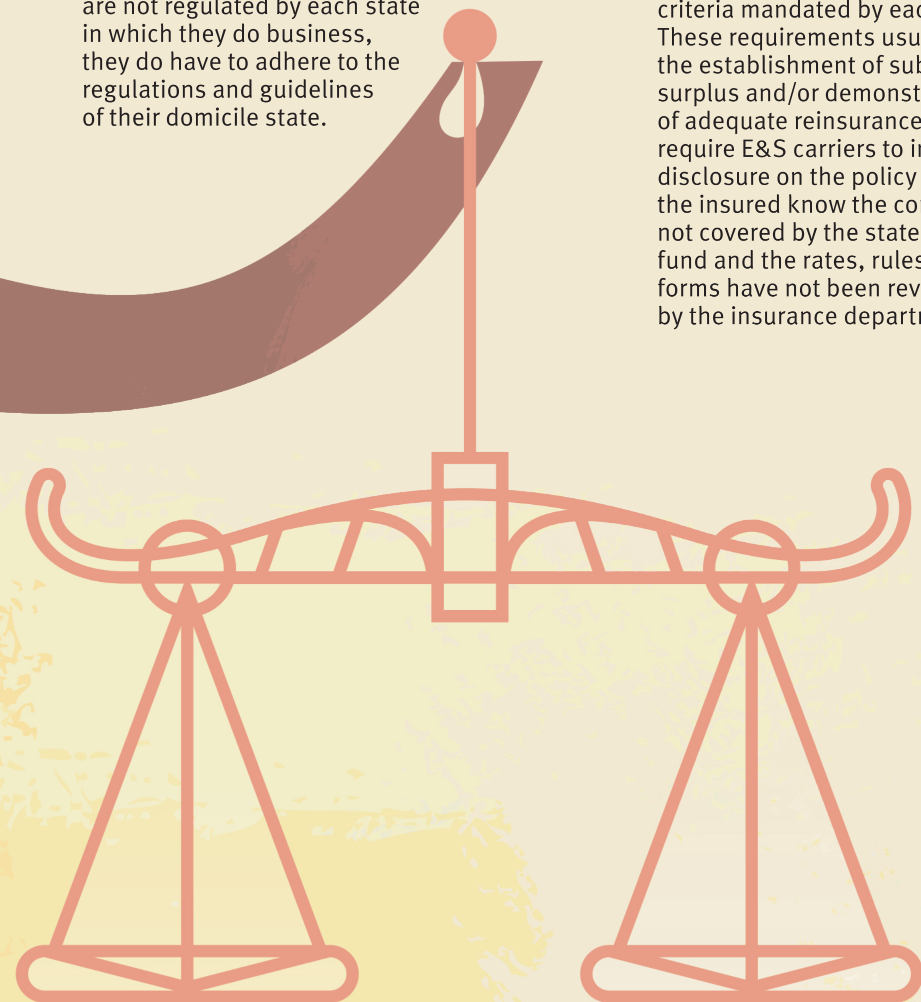
What's the difference?

Admitted vs. Non-Admitted

ProAssurance offers innovative liability solutions for a variety of healthcare risks with diverse needs. While most of our physicians book is admitted business, most other types of healthcare business are written through excess and surplus lines ("E&S"). E&S products can offer increased flexibility for risks that require coverage creativity due to evolving exposures or other goals.



So what is E&S and how does it differ from "admitted"?

An "admitted" insurance company—often referred to as a "standard market" insurance company—is one that has been licensed and approved by the insurance department of your state. Admitted carriers are subject to all state insurance regulations and must file their specific rates, rules, and forms that can be used.

"Non-admitted" carriers—often referred to as "excess and surplus lines" or "E&S" carriers—are free to draft their own insurance contracts and do not submit their forms and rates to state regulators for approval and acceptance. The enhanced flexibility allows for coverages and terms that are more customized to a specific account. While E&S carriers are not licensed by the state, they are authorized to do business in that state. Also while E&S insurers are not regulated by each state in which they do business, they do have to adhere to the regulations and guidelines of their domicile state.

Many states require that E&S insurers only write a policy if it has been rejected by admitted insurers, though some states have a list of eligible classes that are exempt from such a "diligent efforts" process. In all cases, the agent or broker placing coverage on an E&S policy must have a valid surplus lines license.

Surplus lines carriers do not generally participate in state guaranty funds—funds administered by the state to pay claims in the event an insurer becomes insolvent. However, in most states they still must be approved by the state department of insurance to offer MPL insurance and are subject to the same financial strength ratings as standard markets. Carriers must meet certain financial and regulatory criteria mandated by each state. These requirements usually include the establishment of substantial surplus and/or demonstration of adequate reinsurance. States require E&S carriers to include a disclosure on the policy that lets the insured know the company is not covered by the state's guaranty fund and the rates, rules, and forms have not been reviewed by the insurance department.

When might you need an E&S carrier?

The E&S insurance markets originated when those who needed insurance coverage were unable to secure it from the standard admitted companies. E&S carriers play a critical role in insuring higher-risk healthcare groups such as hospitals, telemedicine groups, and physicians whose practice profile does not fit well with admitted carriers. The typical types of risks written in E&S lines include those that:

- Are considered high risk by the admitted market
- Require higher limits than offered by standard markets
- Require specialized or unique coverage
- Have excessive or otherwise unacceptable loss history

E&S insurance policies can only be sold through licensed surplus lines brokers. As a licensed E&S carrier, ProAssurance Specialty Insurance Company can provide single-source solutions for your physician and healthcare facility clients seeking alternatives to the standard MPL coverage.

Physicians, physician groups, and medical facilities are considered based on their unique attributes and requirements. Our Specialty HCPL team works with approved wholesale and national retail brokers to find customized coverage options. Solutions may include varying levels and structures of coverage to suit your clients' needs.

E&S products must be accessed through an authorized wholesaler. Agencies without an E&S license may benefit from working with the ProAssurance Agency on E&S placements and/or in the event of agent contract limitations. ProAssurance Agency serves appointed agents and brokers nationwide.

Does your agency need access to E&S placements?

Call **844-331-6298** or email PRAAgency@ProAssurance.com

What's the difference?

Long-tail vs. Short-tail

Discovery periods and statutes of limitations heavily impact the nature of property/casualty insurance products

Some definitions

Long-tail insurance business involves claims that may be made long after the end of the insured period. These claims typically involve a claim period that is several years long—resulting in high amounts of incurred but not reported claims.[1] Malpractice claims are a common example of long-tail insurance business, but other examples may include employment discrimination, certain cases of child abuse, and similar claims that require a lengthy settlement process.[2]

Meanwhile, short-tail insurance typically involves claims that are resolved relatively close to the exposure or occurrence that triggered the coverage. Common examples of short-tail insurance business include health or auto coverage.[3]

While statutes of limitations vary by state—and the circumstances surrounding a claim will vary—a general guideline is that long-tail insurance business takes a year or more for a claim to be settled, while short-tail insurance claims can often be settled in a year or less.

How long-tail business affects cash flow

Insurance companies that offer coverage for long-tail risks may have higher investment income ratios (net investment income / earned premiums). Policies covering long-tail risks typically have a larger gap between the time the premium is collected versus when any claims on that policy will need to be paid.

It is not uncommon for it to take years for a malpractice claim to go to trial. This puts significant pressure on professional liability insurers to ensure adequate pricing on their policies. The premium collected must be adequate to cover all claims-related expenses throughout the life of the claim. There is also significant pressure on both the insurance company and its insureds to maintain proper record keeping. Careful record retention and documentation are essential to both addressing regulatory requirements and ensure the ability to provide the strongest possible defense should a case make its way to trial.

Sources:

1. https://actuarialtoolkit.soa.org/tool/glossary/long-tailed-business
2. https://www.investopedia.com/terms/l/longtail-liability.asp#:~:text=What%20Is%20a%20Long%2DTail,the%20claims%20to%20be%20settled
3. https://actuarialtoolkit.soa.org/tool/glossary/short-tailed-business

What's the difference in how we submit new business?

Standard vs. Specialty

We're making it easy to know where to submit your new business. ProAssurance Specialty Underwriting solutions are available nationwide with most products offered on an excess and surplus (E&S) basis and made up of five distinct product lines: Custom Physicians, Hospitals & Healthcare Systems, Miscellaneous Medical, Senior Care, and Alternative Risk.

Standard/Physician New Business

Route new business submissions to **Standard Underwriting** when you encounter:

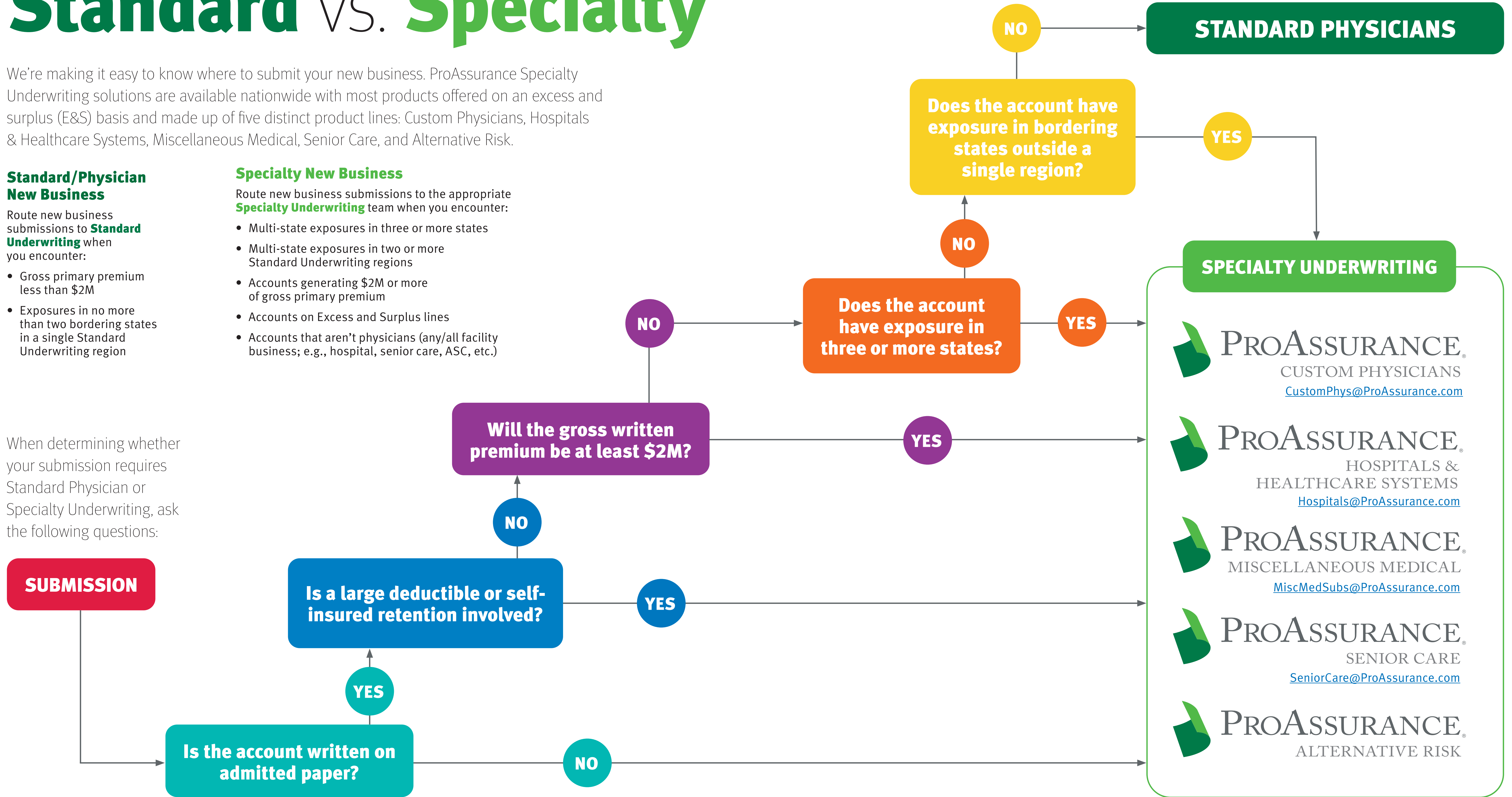
- Gross primary premium less than $2M
- Exposures in no more than two bordering states in a single Standard Underwriting region

Specialty New Business

Route new business submissions to the appropriate **Specialty Underwriting** team when you encounter:

- Multi-state exposures in three or more states
- Multi-state exposures in two or more Standard Underwriting regions
- Accounts generating $2M or more of gross primary premium
- Accounts on Excess and Surplus lines
- Accounts that aren't physicians (any/all facility business; e.g., hospital, senior care, ASC, etc.)

When determining whether your submission requires Standard Physician or Specialty Underwriting, ask the following questions:



What's the difference?

Hard vs. Soft Market

The medical professional liability market entered a soft market cycle in 2005, which has proved to be the longest soft market cycle the industry has ever experienced. Coverage was widely available, policy terms relaxed, and price-based competition common.

Numerous medical malpractice jury verdicts and settlements in excess of $10M were seen in 2019 and continued into 2020 before courts shut down due to COVID-19. As courts reopen and delayed cases make their way into the courts, we are again seeing examples of excess verdicts throughout the country.

In a hard market cycle, insurance becomes less available, policy conditions tighten, and premiums increase. Medical malpractice claims may take a decade to resolve, so the insurers' long-term financial health is of utmost importance to insureds. Many MPL specialty insurance companies were founded in response to the medical liability crisis of the 1970s.

Increased claim severity, largely due to excess jury awards, pushed combined ratios above 100 percent prior to the onset of the pandemic, putting pressure on rates. Excess verdicts then drove up the cost of reinsurance, worsening combined ratios even further. These financial pressures caused experienced MPL insurance companies to revisit pricing and policy terms.

What's the difference?

ALAE vs. ULAE

A medical malpractice case generally starts when a policyholder notifies their insurance company that they received a communication making a demand for money damages or threatening or initiating a lawsuit. A policyholder may also reach out to their insurance carrier for advice after an adverse event. After these types of policyholder contact, the insurance company's claims department begins their claim investigation process. Typically, the claims department will open a claim and begin the investigation process.

Naturally, there are costs incurred by the insurance company for every claim they handle as well as simply maintaining a claims department. These cumulative costs are known as *loss adjustment expenses* (LAE).[1]

Calculating ALAE and ULAE

Some LAE are general in nature and do not apply to any one claim, and others are specific to a single claim. To differentiate between these categories (and to comply with applicable regulations and industry standards), the insurance industry defines expenses as either allocated or unallocated.[2] The essential difference between them comes down to *allocation*, i.e., distribution for a particular purpose.

Allocated Loss Adjustment Expenses (ALAE): costs attributable to a particular claim. Some examples include:[1,2]

- Claim-specific investigation costs
- Expert witness fees
- Billable attorney fees

Unallocated Loss Adjustment Expenses (ULAE): costs expended for general claims operations. Some examples include:[1,2]

- Claims personnel salaries
- General office expenses
- Maintenance costs of vehicles used in claims investigations

How LAE Impacts Our Finances

Investigating a claim is a critical element of the claims process and a significant component of LAE. An investigation will help determine the severity and defensibility of a claim as well as protect against fraudulent claims. In this sense, LAE can help limit loss expenses. LAE is also a component of the *combined ratio* along with these additional components:[2]

- Incurred losses: settlements and jury awards
- Other underwriting expenses: the cost of daily underwriting activities
- Earned premiums: the premium applicable to the portion of the policy that has expired

The combined ratio is an important indicator of an insurance company's profitability, showing how claim and underwriting expenses are offset by earned premiums.

A combined ratio below 100% means an insurer earns more premium than it expends on claim and underwriting expenses, including LAE. That makes limiting LAE an important financial goal for an insurance company.

$$\text{Combined Ratio} = \frac{\text{Incurred Losses} + \text{LAE} + \text{Other Underwriting Expenses}}{\text{Earned Premiums}}$$

References

1. NAIC. https://content.naic.org/sites/default/files/inline-files/094_g.pdf
2. Investopedia. https://www.investopedia.com/terms/l/loss-adjustment-expense-lae.asp

What's the difference?

Occurrence vs. Claims-Made

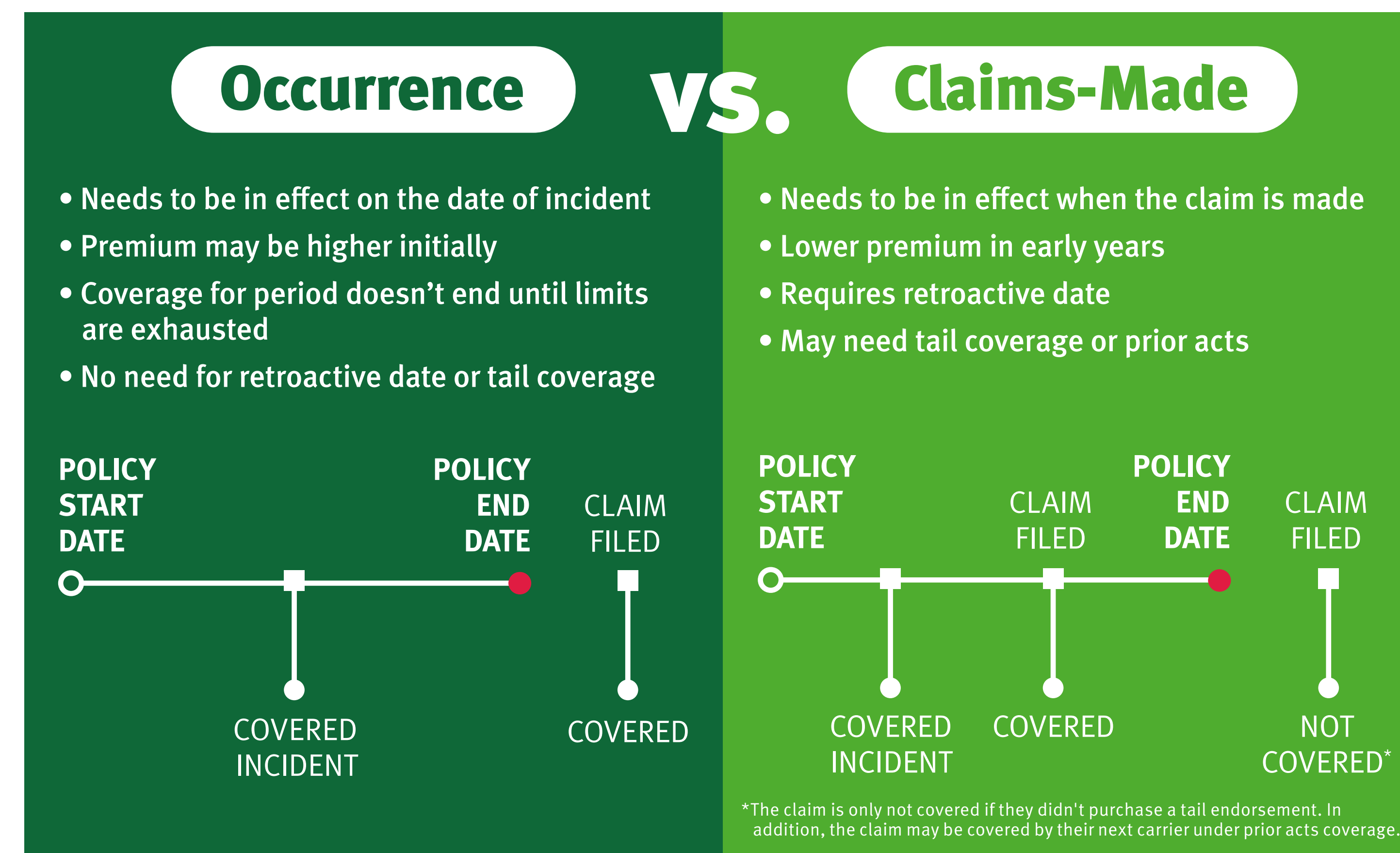
There are two basic types of medical professional liability insurance policies: "occurrence" and "claims-made" coverage. Among insureds, there's often confusion as to the difference between the two; however, it is imperative they understand how policies work in order to make informed business decisions.

The major difference between these policy forms is *how* coverage is provided:

- **Occurrence policies** cover incidents that occur during the policy period regardless of when they are reported. There is no need to purchase tail coverage (reflected in the higher premium charged for this coverage), but the buyer's coverage is restricted to the limits purchased during that policy period.
- **Claims-made policies** cover incidents that are reported/claimed during the active policy period—on or after the retroactive date and before the policy expiration date. Tail coverage (or prior acts coverage) must be purchased to provide continuing protection for incidents reported after the policy expiration date.

Claims-made coverage is the most economical professional liability coverage form for physicians, dentists, and other professionals in the United States today. With a claims-made policy, an insured can increase their policy limits or add coverages as needs change or as new coverages become available. The claims-made policy is more flexible and provides considerable cost savings during the early years.

Claims-made coverage eliminates some of the uncertainty created by the long-tail nature of healthcare professional liability claims (i.e., how long it takes a claim to be resolved as measured from the date of the originating incident). It may offer more flexibility and enables ProAssurance to provide coverage and rates that more accurately reflect the ever-changing healthcare environment and any potential losses.



What's the difference?

Can Do vs. Have Done

Of several things that we believe set ProAssurance apart is the experience of our Claims department in any market where we are writing business.

I've been in the MPL industry now for over 20 years and the state-by-state market share league tables have been an annual obsession of mine. Whenever S&P Global announces they'll have the latest year's NAIC data loaded and accessible, I block my calendar for the entire next week to look at changes for individual companies within individual states—and then put those companies in groups to understand how the industry is changing.

Something that's different in the last two years is that one category of MPL company is disappearing and being replaced by a new category. Typically, the main groups are commercial/multi-lines and then MPL specialists by their scale: national, regional, or local. There are a handful of national specialists, including ProAssurance, as well as several home-state champions who are happy to write some business just across the border, but don't seem to have a formal plan. The regionals are the ones that seem to be on a quest to join the nationals.

Putting a label on the Regionals-With-National-Aspirations is difficult, though, because it really depends on the difference between the words "can" and "have"—the difference between "theoretical" and "actual."

If you have a filing in state, it means you can issue insurance policies there. But a filing is not a book of business, let alone a mature book of business that you've underwritten to a certain standard over a number of years. Being in a risk pool, or placing your clients in a risk pool, means the loss experience of the other insureds in your pool to some degree affects you or your clients.

There are two ways to build a book of business in a new market: mergers and acquisitions or organic growth. In 20 years of obsessing over league tables I've never seen growth into non-contiguous markets happen absent aggressive price competition. If a company is able to use price to garner a meaningful amount of the expansion state's market-share (in a long-tail business that often ends in tears), then it can come at a cost to their mature markets in core states.

In claims, there is no "can" in terms of duty to defend. If you issued the policy, you have to manage the claims. There is an astronomical difference, though, in whether you can successfully defend claims against insureds on your new book in an unfamiliar state or whether you've been doing so for years. Setting aside any carrier-imposed limitations on the assigned defense counsel, how well does that claim manager even know the attorney? How well does the claim department know the litigation environment in a given state, and did that knowledge come from experience in the courtroom?

You are not likely to agree to having a surgical procedure performed on someone close to you by a surgeon who could do it but never actually had—or had done very few, or who had a track-record of bad outcomes. Of several things that we believe set ProAssurance apart is the experience of our Claims department in any market where we are writing business. While there may be large differences in premium quotes (the cost), I think the difference in claims service (the value) is the key item to help clients evaluate their options. Ask your ProAssurance Claims team how many cases we've handled in the prospect's jurisdiction, and ask the expansion marketer to do the same.

Geographic scale is not the only expansion target for the regional break-out companies—there is also product scope. Dive back into the annual NAIC reports and root around in the "Supplements A to Schedule T" over time to see how the traditional physician insurers are seeking business from hospitals, facilities, and other (non-physician) healthcare providers. ProAssurance has mature book of business in these classes and experienced specialists to underwrite the risk. Our hospital business began in 1985. We have an insurance program with Ascension, the third-largest operator of hospitals in the U.S., that's over 10 years old. We understand the non-physician MPL business and have navigated the often-conflicting wishes and motivations between the entity and the provider in coordinated defense situations.

There is a "can vs. have" difference when it comes to offering alternative risk solutions to your clients. Inova, the ProAssurance segregated cell captive solution, has nearly 30 active programs for workers' compensation, MPL, or both. Inova's predecessor company, Eastern Re Ltd., S.P.C., was the first segregated portfolio company ever rated by AM Best. There is a difference between a carrier who has operated a captive program and those who recently developed a program to meet demand but have yet to demonstrate experience.

As you gather proposals and think through how to advise your clients in 2022, I hope that you'll consider the difference between the theoretical can and the actual have. The team supporting your clients' ProAssurance policies have the experience and that value is a difference that makes a difference.

Steve Dapkus
Vice President Marketing

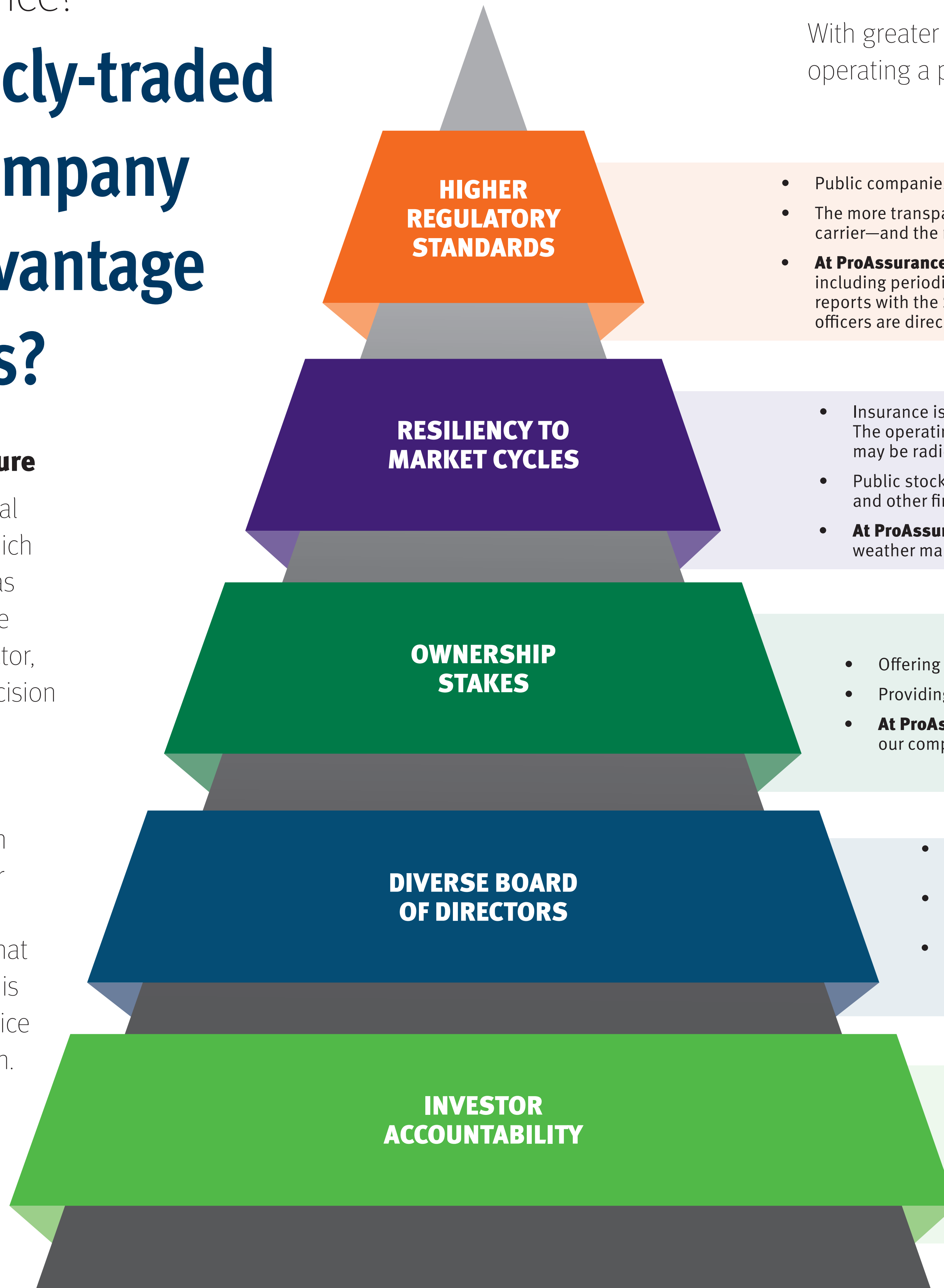
What's the difference?

Does a Publicly-traded Insurance Company Have Any Advantage Over Mutuals?

Compare Ownership Structure

Public stock company or a mutual company? The question over which is a better choice for insureds has been debated for decades. In the medical professional liability sector, the market has made a clear decision with 3 of the top 4 professional liability companies being part of a publicly traded company. In a business that relies on long-term financial security, the reasons for this vote of confidence are clear. There are five primary reasons that trusting a public stock company is the right choice for account service level and overall company health.

NYSE: PRA



With greater regulatory compliance obligations, there's more pressure involved in operating a public company. That added pressure makes us a stronger company.

Higher Regulatory Standards

- Public companies must meet a higher standard due to additional regulatory requirements and are therefore inherently transparent.
- The more transparency and disclosure, the more confidence a buyer can feel in selecting a carrier—and the more comfortable an agent can be when advising their client.
- **At ProAssurance:** We, like all insurers, must report to the NAIC and relevant state departments of insurance, including periodic state audits. Additionally, ProAssurance must disclose material events publicly and file reports with the SEC. We're bound by SOX and other federal laws applicable to public companies. This means our officers are directly responsible for the accuracy of all financial reports and the integrity of key controls.

Resiliency to Market Cycles

- Insurance is a highly cyclical industry, and of the specialty lines, MPL has among the longest tails. The operating environment in which a buyer chooses its MPL carrier or experiences a loss event may be radically different than when the company is called upon to defend a claim.
- Public stock companies have more flexibility in accessing capital markets, plus many investment banking and other financial industry relationships to call upon in hard times—or in times of opportunity.
- **At ProAssurance:** Public stock companies such as ProAssurance are better equipped to weather market cycles and therefore provide a more consistent level of service.

Ownership Stakes

- Offering stock options to employees can be empowering and motivating.
- Providing excellent service becomes less of an obligation and more a point of pride.
- **At ProAssurance:** Many employees are shareholders. Having an ownership stake in our company means we are personally invested in raising the bar every day.

Diverse Board of Directors

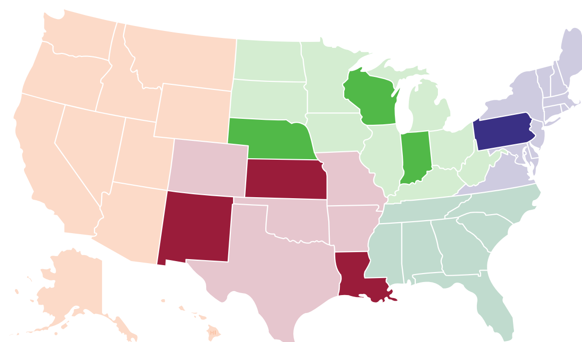
- While publicly owned MPL carriers have physician board members, they should also have legal and financial representation.
- Board members with more diverse sets of experience will bring complementary perspectives to problem solving and ultimately make informed, well-rounded decisions.
- **At ProAssurance:** Physician involvement remains central to our operations—we have five physicians on our board of directors advising us on the market and medicine. However, we also have members with professional experience from the other disciplines, which is a major advantage over the old-school physician board monocultures.

Investor Accountability

- Institutional investors are adept at evaluating the business operations and performance of companies in their portfolio.
- Shareholder confidence in a company signifies a reliable, well-run, financially healthy business.
- **At ProAssurance:** Investors are digging through financial statements, building valuation models, and vigorously questioning us in quarterly live calls. They're constantly checking to make sure they've made a wise investment.

What's the difference?

Patient Compensation Fund Programs Vary by State



Eight states currently operate programs that provide excess medical liability insurance coverage for eligible healthcare providers. These patient compensation funds are funded by surcharges on the underlying coverage and vary by state on details like provider eligibility, coverage details, surcharges, residency requirements, requirements for underlying coverage, and more. The table below provides a general state-by-state summary of the key details of these funds.[1, 2]

Name of Fund	Indiana Patient's Compensation Fund (PCF)	Kansas Health Care Stabilization Fund (HCSF)	Louisiana Patient's Compensation Fund (PCF)	Nebraska Excess Liability Fund	New Mexico Patient's Compensation Fund (PCF)	Pennsylvania Medical Care Availability and Reduction of Error Fund (MCARE)	Wisconsin Injured Patients and Families Compensation Fund
Mandatory or Voluntary?	Voluntary for most entities and individuals practicing in IN (residents and non-residents)	Mandatory for most healthcare providers practicing in KS (residents and non-residents)	Voluntary for providers practicing in LA (residents and non-residents)	Voluntary for providers practicing in NE (residents and non-residents)	Voluntary for covered providers practicing in NM (residents and non-residents)	Mandatory for most providers practicing in PA (residents and non-residents)	Mandatory for most providers who practice in WI ›240 hrs/yr and most providers who are WI residents but practice in MI; voluntary for other providers
Fund Limits[3]	Total cap of $1,650,000 for act of malpractice between 6/30/17 and 7/1/19; $1,800,000 thereafter Provider capped at $400,000 from 6/30/17 to 7/1/19; $500,000 thereafter	Multiple options available	Total cap on damages is $500,000 (exclusive of medical costs, which are paid by the fund); provider only liable for $100,000	$2,250,000 total cap	$750,000 total cap for individual providers who belong to the fund, except for medical care and punitive damages; Provider capped at $250,000	$500,000/$1,500,000 for individual providers	No limit. The Fund indemnifies its participants for any amount over $1,000,000
Coverage Type	Claims Made or Occurrence	Claims Made	Claims Made or Occurrence	Claims Made or Occurrence based on underlying coverage	Occurrence	Underlying coverage may be claims made or occurrence, but MCARE coverage is occurrence only.	Occurrence
Does Fund coverage extend outside of the Fund state?	No	If KS resident, yes. Coverage is worldwide. If contributing as a non-resident, coverage is limited to KS.	No	No	No	Yes, it follows the physician if they have incidental coverage in another state covered by their PA policy.	Yes, if the primary practice is in WI.
Who submits information to the Fund?	Carrier	Carrier	Carrier	Insured	Insured	Carrier	Carrier

Notes

1. The information here is for general understanding only. Visit the fund website for specific details about a fund.
2. Effective January 1, 2020, the South Carolina Patients' Compensation Fund (PCF) and the South Carolina Medical Malpractice Joint Underwriting Association (JUA) were consolidated into the South Carolina Medical Malpractice Association (SCMMA). As a result, the South Carolina PCF fund is winding down, with the intent for the MMA to evolve into the market of last resort for providers and entities.
3. Limits are in excess of underlying coverage.

Keeping Our Customers: 2022 Retention Campaign

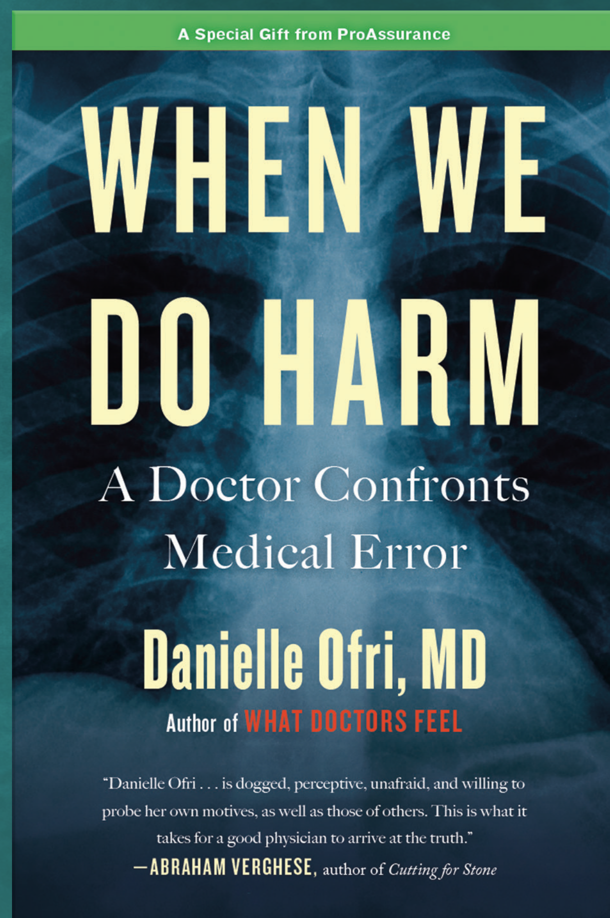
In order to support our retention goals, we conduct an annual campaign thanking our insureds and offering them a complimentary resource, usually a book. Involving a series of direct mails, we've seen great success in the past with reply rates up to 25%. At the conclusion of each campaign, we measure the retention rate for those who request the book as compared to non-responders and have seen between a 4% and 10% bump for those who reply.

This year's retention campaign features a book by Dr. Danielle Ofri called *When We Do Harm: A Doctor Confronts Medical Error*. Another book by Dr. Ofri, *What Patients Say, What Doctors Hear*, was a popular prior offering and she has been a presenter at our Risk Management conference.

Published amid the first COVID surge, *When We Do Harm* places the issues of medical error and patient safety front and center in our national healthcare conversation. Written with Dr. Ofri's signature combination of current research, gripping narrative, professional experience, and even humor, *When We Do Harm* explores the diagnostic, systemic, and cognitive causes of medical error.

Dr. Ofri addresses what patients can do to protect themselves, how to ensure that hospitals and doctors are not committing preventable errors, what happens when the checklist is not enough to prevent harm, how racial and economic inequities worsen care, and what steps medical professionals and institutions can take to improve patient safety.

If you'd like to read the book yourself, email AskMarketing@ProAssurance.com letting us know your mailing address. The Marketing department will provide ongoing campaign updates in future issues of ProVisions. Please note the 2022 campaign is inclusive of both legacy NORCAL and ProAssurance MPL insureds.



How it Works

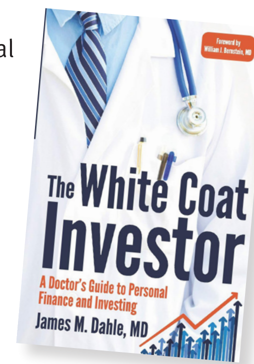
A series of mailings goes out to our MPL insureds (excluding Certitude insureds) 60-90 days in advance of their renewal date:

- **Mailing 1:** A personal note, a custom pocket note with quotes from Dr. Ofri's book, and a reply card
- **Mailing 2:** A letter from Risk Management, following 4-5 weeks after Mailing 1, asking insureds to reply for the book and referring them to Risk Management contacts
- **Mailing 3:** An email communication to all remaining insureds who hadn't yet replied, following 4-5 weeks after Mailing 2, with a link to a form to request the book

The mailings go out approximately one month apart, and once someone responds, they are removed from the follow-up mailings. We actively monitor results of each stage of the mailings and adjust the campaign to optimize success. A final reminder email to nonrespondents concludes the campaign.

The 2021 Retention Campaign Results

In 2020, we saw how the initial stages of the COVID-19 pandemic financially strained our customers, and we wanted to offer our insureds a resource for financial challenges going forward. As such, 2021's offer was the book *The White Coat Investor: A Doctor's Guide to Personal Finance and Investing* by Dr. James Dahle, a practicing ER physician. This helpful resource provides financial and investing insight related to concerns faced by medical professionals. Dr. Dahle was also a speaker at our annual Leadership Elite meeting and received high praise.



The campaign was largely successful, with an overall response rate of 23.2% as of January 31, 2022. With replies still trickling in, we plan to run the analytics again soon to see the effect of the campaign on renewal rates.

Welcoming NORCAL Insureds

In 2021, we also adapted the retention campaign to welcome NORCAL Insurance Company policyholders to ProAssurance. As part of the "Prepare for a Bright Future" mailing, we introduced them to the Treated Fairly pledge—our commitment to the principle of fair treatment that guides every decision we make and every action we take in defense of our insureds. The response rate from the NORCAL insureds was better than expected at 17.5%, which we viewed as excellent given our audience's limited familiarity, at the time, with ProAssurance.

We appreciate everything you do to place and retain business with ProAssurance. If you have any questions about the retention mailer, or again to request a copy of the book, please email AskMarketing@ProAssurance.com.

March/April/May

Mailing 1: *Replies* **254** / *Recipients* **2,366**
Mailing 2: *Replies* **204** / *Recipients* **2,133**
Mailing 3: *Replies* **139** / *Recipients* **1,569**

Total: *Replies* **597** / *Recipients* **2,366**

Response Rate **25.2%**

June/July/August

Mailing 1: *Replies* **443** / *Recipients* **3,474**
Mailing 2: *Replies* **327** / *Recipients* **3,195**
Mailing 3: *Replies* **156** / *Recipients* **2,251**

Total: *Replies* **926** / *Recipients* **3,474**

Response Rate **26.7%**

September/October/November

Mailing 1: *Replies* **260** / *Recipients* **2,262**
Mailing 2: *Replies* **166** / *Recipients* **1,899**
Mailing 3: *Replies* **108** / *Recipients* **1,521**

Total: *Replies* **534** / *Recipients* **2,262**

Response Rate **23.6%**

December/January/February

Mailing 1: *Replies* **309** / *Recipients* **3,250**
Mailing 2: *Replies* **226** / *Recipients* **3,217**
Mailing 3: *Replies* **28** / *Recipients* **2,157**

Total: *Replies* **563** / *Recipients* **3,250**

Response Rate **17.3%***

2021 Overall Response Rate

23.2%*

Data as of January 31, 2022. Additional replies expected.

THE Comments Section

This month's topic:

Medscape Malpractice Report 2021

This month, we are featuring Medscape's annual Malpractice Report. Each year, Medscape surveys its physician readership about their experiences with malpractice claims in the previous year—whether or not they had experienced a claim, the outcome of their experience, and how the threat of a malpractice claim affects their day-to-day practice. This year's survey results represent over 4,300 physicians from 29 specialties.

View the full article.

Source: Medscape

"Practice state and medical specialty may determine malpractice lawsuit prevalence, yet 'change specialty' or 'move out of state' were not top responses to the questions 'what would you have done differently' and 'what happened as a result of the lawsuit.'"

Mike Iovine
Assistant Vice President
Senior Living and Long Term Care

"With respect to the 33% settlement outcome, the highest response to 'the Ultimate Outcome of Your Lawsuit,' I suspect the various 'dismissal' options understate the positive outcomes often achieved by claims. Overall, 39% of the reported lawsuits were dismissed, which is reflective of the hard work by defense counsel and claims staff to achieve optimal outcomes. This is more consistent with the 61% who reported a fair outcome of the lawsuit."

Jeff Kruger
Lead Claims Specialist
West Region

"One of the most interesting things to me from this report was that 83% of physicians believed that their lawsuit was unwarranted. This really speaks to the importance of what we do, as most physicians overwhelmingly believe that when they are sued that it isn't fair. Medicine and the human body are complicated, and treatment outcomes are uncertain, even when the medicine is good. Having a policy that protects doctors when things go wrong is important. Having a company defend you even when things don't is probably more important."

Doug Darnell
Business Development Director, Midwest Region

"After reviewing the Medscape 2021 Malpractice Report, the trends are not surprising and in my opinion, many claims could be prevented by better managing patient expectations. Managing expectations crosses all areas of medical practice, from wait times, to the appointment scheduling process, financial responsibility, and informed consent. There are many underlying contributing factors that differentiate those patients who choose to sue from those who do not, but a clear understanding of expectations is the key, along with adequate documentation of how they were managed."

Ginger Kelley
Risk Management Manager
Southeast Region

About The Comments Section

The Comments Section is a recurring feature that focuses on an industry article in line with the monthly theme. ProAssurance thought leaders offer insights on the article and how the topic relates to our industry.

Ties that Bind

Monthly Insights for Selling to Healthcare Professionals

The Benefit No One Else Can Provide—YOU!

Your clients choose ProAssurance as their MPL insurance provider because of the value and confidence it provides. ProAssurance delivers a strong reputation, tailored coverage options, competitive rates, and even the pledge to be Treated Fairly®.

There is another value-added benefit your clients receive along with their ProAssurance coverage that no other company can provide—you.

You do more than sell insurance; you provide a steady presence that gives your clients the confidence to deliver patient care in a complex healthcare environment. When clients buy from ProAssurance, they're also buying from you.

In an industry with similar products, the agent can be the differentiator that wins the business. It's about personalizing the relationship and creating distinction beyond the product.

> "In an industry with similar products, the agent can be the differentiator that wins the business."

Healthcare is a team effort where everyone is trusted to perform their job at a high level of competence. Your clients depend on your expertise when they consider insurance coverage. They also expect you to ensure they have proper coverage with a financially stable carrier.

HCPs favor doing business with suppliers and service providers that:

- Meet their expectations as promised
- Show ongoing commitment to serving their needs

What do clients expect of you during the policy term? When expectations are clear, it's as simple as following through on what you've agreed to. Clients might not always remember it when you fulfill your promises, but they'll never forget it when you don't.

HCPs deal with two types of salespeople—those who only show up to pitch a product and those who deliver value consistently throughout the relationship. Companies and representatives send newsletters and email blasts to maintain a steady presence, but this can't replace the personal touch. One-on-one interactions that focus on relevant concerns show genuine commitment and help the client associate you with value.

Doctors describe a set of characteristics or qualities they look for when selecting suppliers and service providers for the long term. These include:

- **Responsiveness:** Healthcare is a 911 business. When HCPs make a request, they expect a prompt response. Acknowledge them immediately, even if you can't address their issue at the moment. Tell them how and when you'll be responding to their request, then honor the timeline.
- **A proactive presence:** HCPs expect support personnel and service providers to do their jobs without asking instead of needing to be micromanaged. Monitor your accounts and notify them when there's an issue or change that warrants their attention. Don't make them come looking for you. Build trust by showing clients you're watching out for their best interests behind the scenes.
- **Respecting the client's individuality:** HCPs in the same specialty might share similar needs, but each has an individual perspective. Take the time to learn and understand their unique concerns and perceptions instead of making assumptions.
- **Follow-through:** Too many product and service providers promise things to HCPs that go unfulfilled. You might not think that doing what you say you'll do is a differentiator, but in healthcare, it is. Never make a client ask you for something more than once.

You compete in the MPL insurance market with two compelling advantages. One is the strength and integrity of ProAssurance, and the other is the personalized service and attention only you can provide. Together it creates a winning combination that is unmatched.

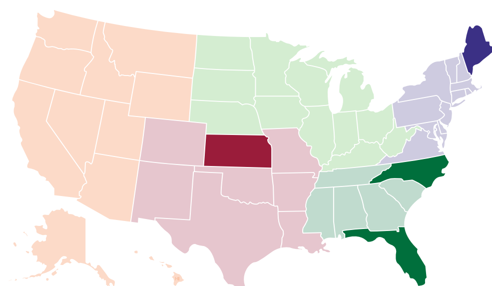
Written by **Mace Horoff** of Medical Sales Performance

Mace Horoff is a representative of Sales Pilot. He helps sales teams and individual representatives who sell medical devices, pharmaceuticals, biotechnology, healthcare services, and other healthcare-related products to sell more and earn more by employing a specialized healthcare system.

Have a topic you'd like to see covered? Email your suggestions to AskMarketing@ProAssurance.com.

MPL State News

The last hard market ended after claim frequency fell sharply in 2004/05. While MPL claim frequency remained flat, claim severity has been steadily ticking up, which compounds over time. In recent years, large jury verdicts have widely been seen as the primary driver of increasing claim severity. Below are examples of recent verdicts which help to illustrate current claim severity trends.



KANSAS

Multi-million-dollar verdict reinstated in Wichita teacher's death—The Kansas Court of Appeals has reinstated a jury verdict against a hospital and awarded more than $5.3 million to the surviving husband and son of a Wichita teacher who died after giving birth at the hospital. The court ruled that the district judge erred when he overturned the verdict against the hospital after the trial. (The Wichita Eagle)

NATIONAL

AM Best answers questions as DUAE, MGA assessments go live—Delegated Underwriting Authority Enterprises ratings (DUAE) and Managing General Agent (MGA) ratings are now available from AM Best. The ratings agency confirmed these new assessments are not credit ratings, and will not impact insurers' financial strength ratings.

"AM Best believes that DUAEs are an increasingly important part of the insurance ecosystem, with a higher proportion of insurance revenue being generated through DUAEs in many global regions," said Matthew Mosher, president and CEO of AM Best Rating Services, in a statement about the official launch of DUAE assessments. "The presence and significance of DUAEs continue to rise, and their decisions could financially impact their insurance partners. Assessing DUAEs will provide transparency to the market and will inform the industry of a DUAE's ability to perform services on behalf of its insurance partners," he said. (Carrier Management)

NORTH CAROLINA

NC Doctor: Address rising violence in the ER before someone is killed—Violence in emergency departments and other hospital settings is growing at an alarming rate. Not just in large urban centers but across the spectrum of healthcare facilities. VA hospitals, small rural hospitals, and local community hospitals are not immune from such violence. (The Charlotte Observer)

FLORIDA

Florida Senate passes healthcare liability shield—The Florida Senate approved a proposal that would extend COVID-19 legal protections for hospitals, nursing homes, and other health care providers. The protections were approved during last year's legislative session but are set to expire March 29 unless they are extended. They address lawsuits involving issues such as transmission of COVID-19 and treatment of people with COVID-19. (Tampa Bay Times)

MAINE

Main doctor's license suspended over COVID-19 misinformation—A medical board in Maine has moved to suspend the license of a doctor who was accused of spreading misinformation about COVID-19. The board also voted to suspend the doctor's license for 30 days unless they agree to transition to inactive status. (Maine Public)

NATIONAL

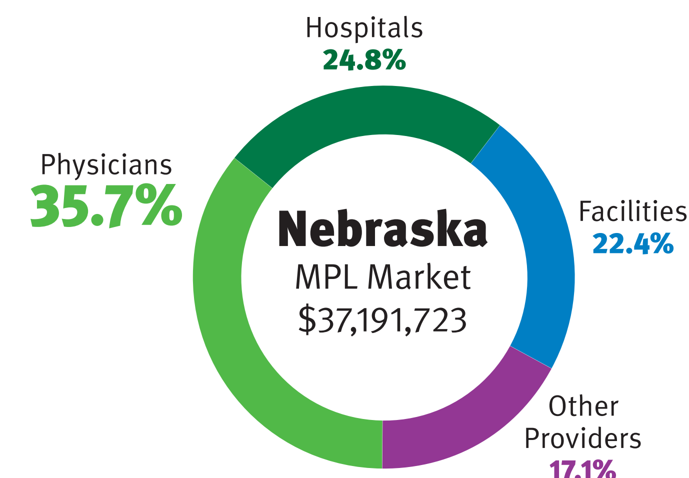
Healthcare trends of 2022—Providers face staffing shortages and continued pressure on margins while payers are challenged by people who continue to put off care, resulting in a member base that is sicker.

Hospitals are facing increasing turnover, widespread burnout, and staff members calling in sick. More spending on salaries, bonuses, and other incentives to recruit and retain staff are key issues unlikely to abate anytime soon amid a "Great Resignation." (Healthcare DIVE)

MPL State Profile

Nebraska

- **41** Rank in MPL Market
- **4** ProAssurance Rank
- **27** NORCAL Rank
- **4** **ProAssurance Post-Merger Rank**



Tort Laws

- **Limits on damages for pain and suffering:** $500k total cap per provider; $2.25M cap on total damages
  - Difference paid by PCF
  - Effective 2014 (§44-2825)
- **Limits on contingent attorney fees:** court approval required
  - Effective 1976 (§44-2834)
- **Reform of collateral source rule:** discretionary, only applies to nonrefundable medical reimbursement insurance
  - Effective 1976 (§44-2819)
- **Periodic payment of future damages:** none
- **Statute of limitations:** 2 years or 1 year from discovery; 10 year maximum
  - Effective 1972 (§25-222)

Patient Compensation Fund

The Nebraska Excess Liability Fund (PCF or Fund) is available to healthcare professionals, as outlined in the Hospital-Medical Liability act. Participants are responsible for the first $500k per claim, with the fund paying the difference up to $2.25M. Participants are required to carry a minimum of $500k per incident/$1M annual aggregate in coverage ($3M aggregate for hospitals).

In 2020, the state of Nebraska reported that claim costs had exceeded PCF funding from 2011-2019. Further, the Fund's operating reserve had decreased 30% over the same time period. To address this, the state has been steadily increasing PCF surcharges. It was raised to 50% in 2020, the legal maximum.

Prejudgment Interest

- **Tort action rate:** 2% above the bond investment rate as stated in Neb. Rev. Stat. § 45-103
- **Accrual date:** From the date of the plaintiff's first offer of settlement which is exceeded by the judgment until the entry of judgment if the conditions stated in § 45-103.02 are met.

Pending Legislation

LB 160 – Carryover bill (1/5/2022)

This bill would increase the total damage cap for medical liability cases from $2,250,000 to $10,000,000, effective December 31, 2021. Requires health professionals to carry policies with limits of $5 million/occurrence and annual aggregate limits of $10 million/year (up from $500,00 and $1 million, respectively). Requires hospitals to carry aggregate limits of $30 million per year (up from $3 million).

LB 53 – Carryover bill (1/5/2022)

This bill provides civil liability immunity to healthcare providers who comply with crisis standards of care during the COVID-19 emergency.

- Judiciary Committee hearing held on 2/18/21.
- Effectively dead, though still considered active on the docket.
- Definitions of the crisis standards were rolled, but the language was drastically changed in that bill to exclude immunity.

LB 139 – Signed by Governor (5/25/2021)

This law prohibits a person from bringing or maintaining a civil action seeking recovery for injuries or damages sustained from exposure or potential exposure to COVID-19 on or after the effective date of this act if the act or omission alleged to violate a duty of care that was in substantial compliance with any federal public health guidance that was applicable to the person, place, or activity at issue at the time of the alleged exposure or potential exposure. The law establishes a Health Care Crisis Protocol that establishes the plans and protocols for triage and the application of medical services and resources for critically ill patients in the event that the demand for medical services and resources exceeds supply as a result of a catastrophic disaster. This enactment would not change the standard for malpractice or professional negligence, but would change the circumstances under which those standards apply.

provisions

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Medmarc Coverage Options Offer Additional Revenue Streams

Whether you have worked with ProAssurance for five or 35 years, we want to help you be aware of potential revenue streams. Medmarc Insurance Group (Medmarc), a subsidiary of ProAssurance, offers you additional opportunities in the liability insurance sector. Medmarc is a leading underwriter of products liability insurance for medical technology and life sciences products around the globe. Since its inception in 1979, Medmarc has insured over $1 trillion in global sales of medical products and covered millions of clinical trial participants.

The recently updated Medmarc coverage options flyer outlines cross-selling opportunities between ProAssurance's healthcare professional liability policy and Medmarc's products liability coverage. Download the flyer for details on how your agency can gain access to these coverages on behalf of your clients.