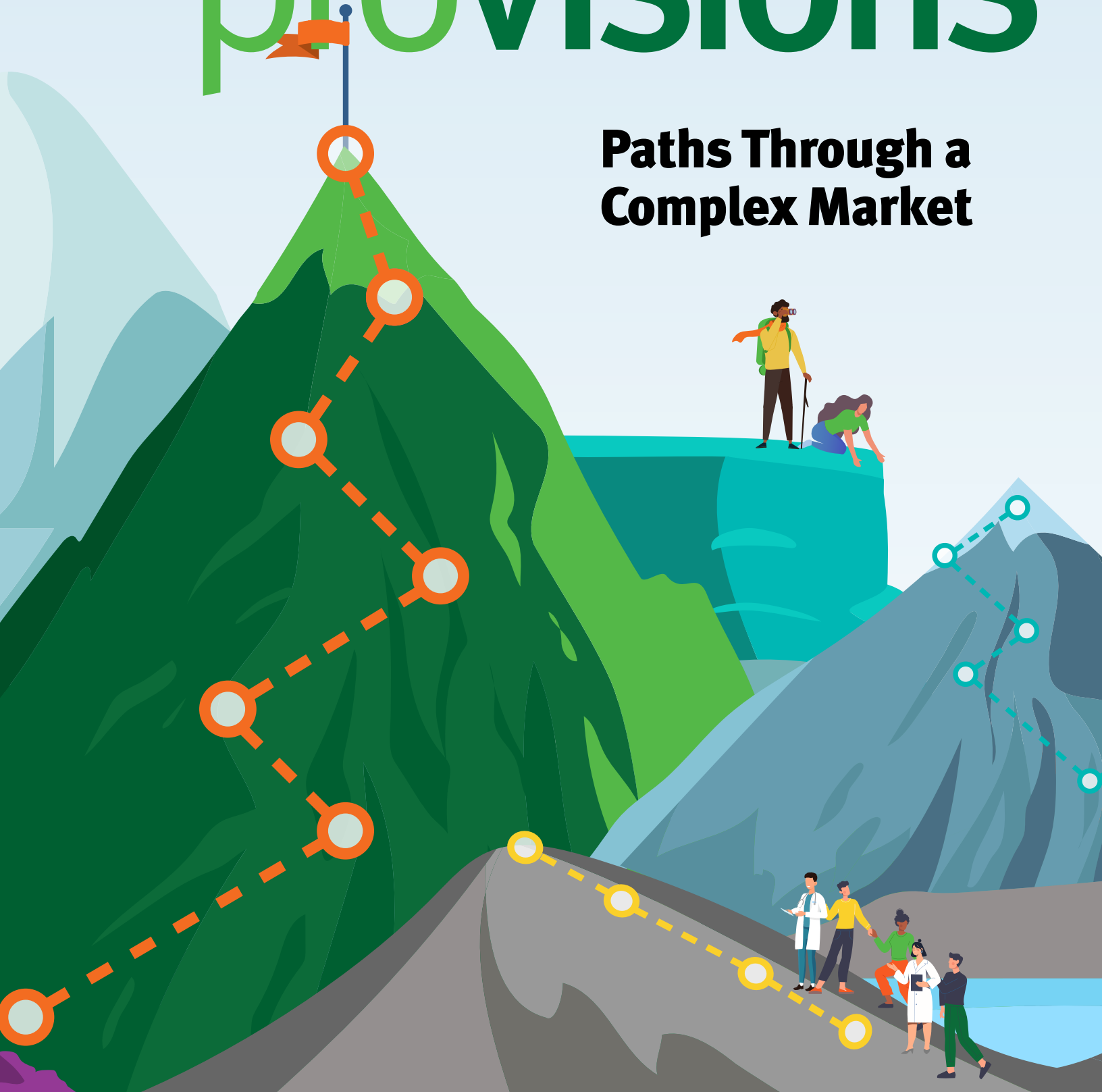




provisions

Paths Through a Complex Market



A Word from Mike Rosenthal

The Carrier of Choice in a Fluid Market

In this issue we focus on how market dynamics are being affected by the following:

- Physician employment and practice consolidation are shrinking the physician market
- Social inflation's impact on increasing claims severity
- New challenges to tort reform potentially leading to higher claims costs
- The effects of multi-line carriers' exit from certain segments
- The impact of regional carriers' attempts at market expansion

The continuing consolidation of practices under healthcare systems combined with increased activity of private equity is quickly changing the traditional physician market. New technologies, an aging population, and the ongoing physician shortages change the way services are delivered. All of this requires those of us trying to protect healthcare organizations to be innovative and have the solutions needed to protect all manner of delivery vehicles. Add an uncertain claims environment due to social inflation's effects on jury awards and new challenges to tort reform taking place throughout the country and your choice of a carrier becomes more critical than ever.

ProAssurance was built to be your carrier of choice in an environment like this. We are one of very few companies that understands how to operate at a national scale, allowing us to successfully insure and defend risks operating across multiple jurisdictions. Our financial strength allows us to withstand difficult market cycles and our size gives us the resources to help protect tort reform. Finally, our broad product offerings combined with an innovative culture allows us to provide you solutions for even your most unique or complex opportunities.

The Business Development team is at your disposal to discuss how we can take advantage of opportunities or create strategies to help us all succeed in this fluid market. Give your representative a call to discuss your needs at any time.



Mike Rosenthal
Senior Vice President, Business Development

"The MPL market still is likely to face one of its most difficult periods in a decade. MPL carriers, for the most part, have significant capital to help them weather the current storm. The long-term survivors will be those who can attract and retain their insureds, find ways to mitigate the effects of social inflation and the growth of nuclear verdicts, effectively use innovation, navigate the legal challenges and significant liability uncertainties related to COVID-19, and keep their finger on the pulse of ever-changing legislative and judicial environments."

AM Best

An average of

47,000

malpractice cases are filed every year in the U.S.

U.S. Department of Health and Human Services

ProVisions is ProAssurance's monthly agent magazine. If you or your colleagues do not receive the digital version, email AskMarketing@ProAssurance.com. Please include names and email addresses for everyone who would like to subscribe.

©2022 ProAssurance

TABLE OF CONTENTS ...

- [A Word from Mike Rosenthal](#)
- [Another Sign of a Market Turn: A Dwindling Number of Carriers](#)
- [The Numbers Behind the Shrinking Physicians Market](#)
- [Preserving Medical Liability Protections](#)
- [Loss Costs on the Rise in MPL Industry Organizations and Their Insights on the MPL Market](#)
- [2021 Shock Verdicts & Judicial Hellholes in the U.S.](#)
- [Medical Economics Top Challenges for Healthcare Professionals 2022](#)
- TIES THAT BIND**
- [Let the Experts Be the Experts](#)
- [The Comments Section](#)
- [ProAssurance Regional Underwriting Model](#)
- [Invite Claims or Risk Management Personnel to Your Sales Discussions](#)
- [MPL State News](#)
- [MPL State Profile: District of Columbia](#)
- [January Claims Rx Now Available](#)
- [An Analysis of Medical Malpractice Suits by State](#)
- [Reminders](#)
- [Maria Byers Joins ProAssurance](#)



Another Sign of a Market Turn: A Dwindling Number of Carriers

The MPL insurance market began a long run in a soft market cycle in 2005. Now, it's clear we're in the early stages of a hard market; however, the severity of that market remains uncertain.

The coronavirus pandemic has introduced a variable that makes the current transition from a soft market to a hard one unique.

Due to the long-tail nature of medical malpractice claims that may take years to resolve, an insurer's long-term financial health is of utmost importance to insureds. ProAssurance was founded in response to the first hard market after it began in 1975, providing stability for our insureds during the next three hard market cycles in the '80s, '90s, and early 2000s.

Beginning in 1999, and as a result of significant settlement awards and court decisions, MPL insurance carriers experienced claims costs that exceeded established reserves—resulting in significant losses that reduced the capital available to support current and future business.

This situation led many carriers to withdraw from the market due to financial challenges associated with writing MPL. In fact, in late 2001, St. Paul Companies, which was the biggest carrier at the time, exited the MPL insurance business and effectively ended coverage for more than 40,000 physicians. In 2003, Farmers Insurance Company followed suit. In addition to withdrawing or limiting business in certain markets, many carriers implemented rate increases to survive.

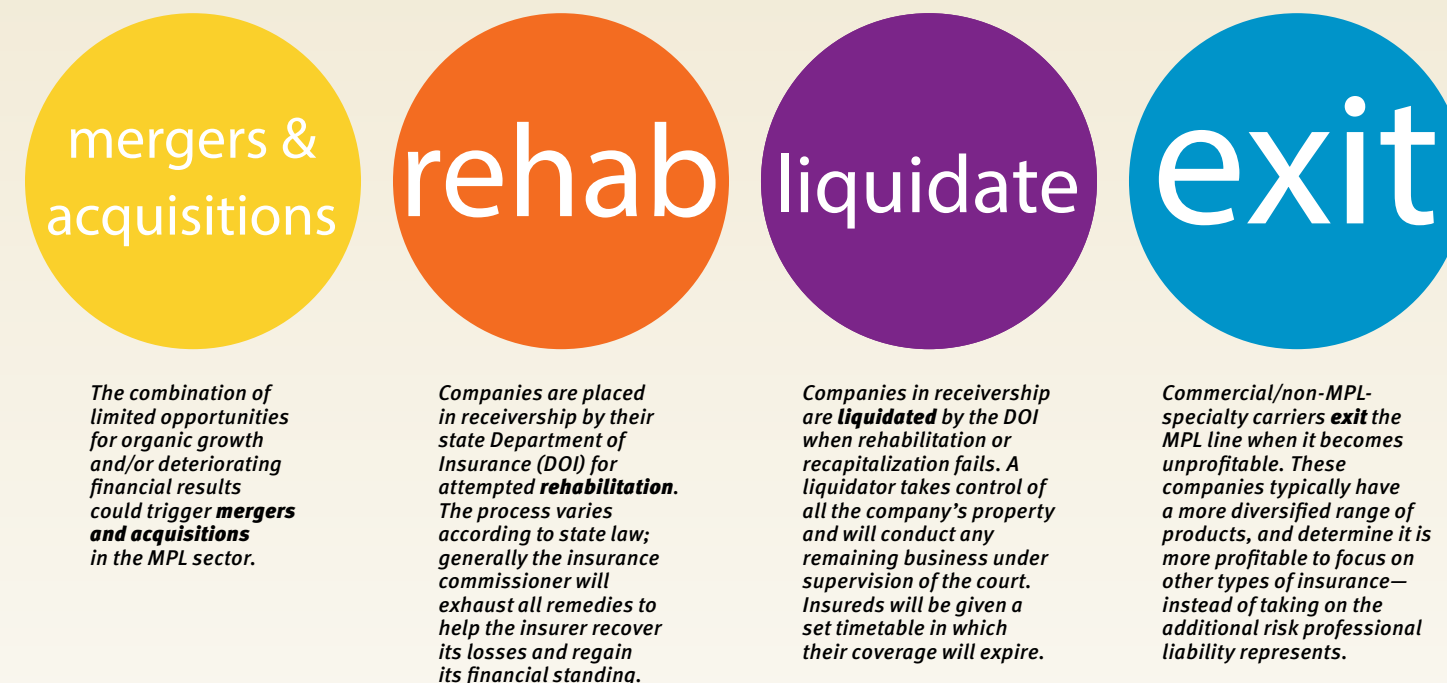
Today, we're seeing similar movement, with increasing claims severity, eroding tort reform, and stressed carriers exiting the market. According to AM Best, consolidations are playing a key role for the top 20 MPL carriers. In fact, the acquisition of NORCAL Group in 2021 established ProAssurance as the third largest MPL insurer in the country. With the continuing consolidation of the healthcare industry and its providers, the consolidation of MPL insurers is likely to continue.

Financial stress in the MPL insurance industry will affect individual carriers in different ways depending on their underwriting discipline and available capital over the previous 3-5 years. In past market cycle transitions, notable events signaling market distress included:

The insurance market is cyclical and often characterized as being in either a "hard" market or a "soft" market.

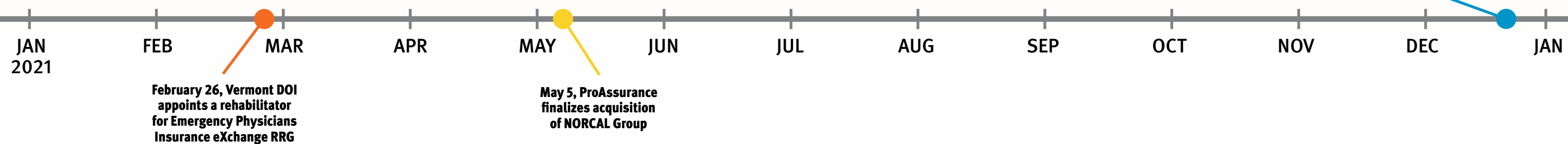
Soft markets are generally characterized by coverage that is widely available, relaxed policy terms, and priced-based competition.

Hard markets are generally characterized by decreased availability of coverage, tightened policy terms, and increased premiums to stabilize reserves.



2021 Distress Signals

COVID has put further pressure on markets that were already hardening for some time. The past couple of years saw publicly reported instances of all four warning signs. The number of insurers pulling back from specific markets is growing, and this latest series of market withdrawals spans a range of business lines, insurance companies, and regions and supports the broader view that a market cycle turn is underway.



The Numbers Behind the Shrinking Physician Market

PART TWO IN OUR ONGOING COVERAGE OF:

The Decline of the Physician-Owned Practice and Its Impact on HCPL Underwriting

As discussed in the November 2021 issue of ProVisions, one of the most important trends in HCPL underwriting in recent years is the shift in the market away from a largely physician-owned practice model toward an increasingly common physician-employee model.

In 2020, for the first time, a majority of physicians were employees rather than owners.¹ This trend and others are impacting the traditional business model of many HCPL insurers. It's a challenge that ProAssurance's Specialty Underwriting teams are well-equipped to handle, working with agency partners to expand efforts to capture hospital and large group premiums.

References

1. AMA. Recent Changes in Physician Practice Arrangements: Private Practice Dropped to Less Than 50 Percent of Physicians in 2020.
2. WebMD. More and More Doctors Abandoning Private Practice.
3. Bureau of Labor Statistics, U.S. Department of Labor. Occupational Outlook Handbook.
4. Physicians Advocacy Institute. COVID-19's Impact On Acquisitions of Physician Practices and Physician Employment 2019-2020.
5. McKinsey & Company. Physician employment: The path forward in the COVID-19 era.

In 2018 **54%** of patient care physicians worked in a private practice (a practice wholly-owned by physicians)¹

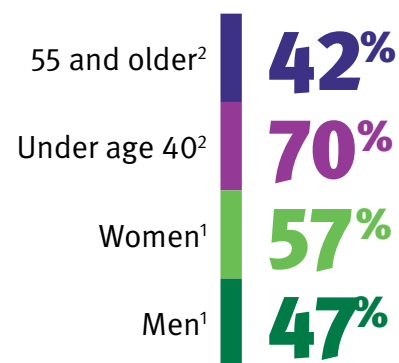
In 2020 **49%** of patient care physicians worked in a private practice¹

This marks a drop 5 percentage point drop from 2018 indicating fewer doctors are opting to run their own small private practices, with more seeking jobs in hospitals or larger medical groups.¹

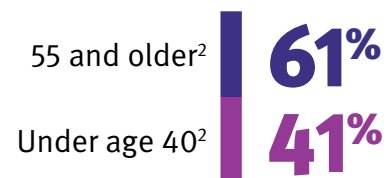
Retiring physicians are leaving small practices behind. More female physicians and younger physicians coming out of their residencies are choosing the financial stability and work-life balance of employment.²



Percentage of Physicians choosing employment over ownership in 2020



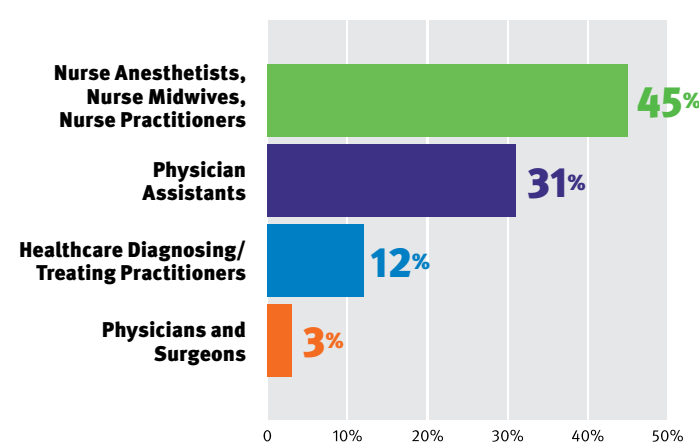
Physicians working in practices with 10 or fewer physicians in 2020



Physicians working in practices not wholly-owned by physicians in 2020

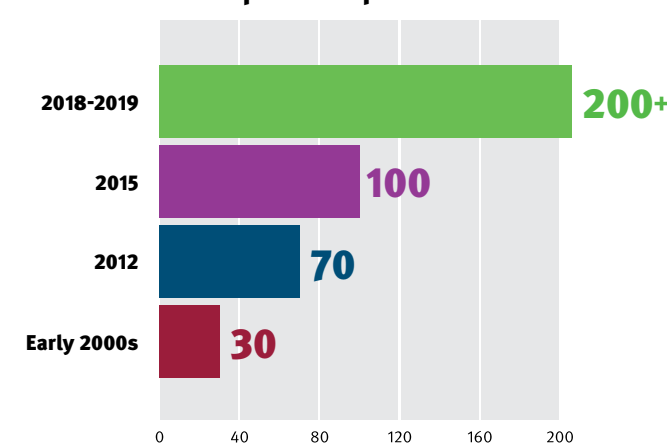


Expected Healthcare Employment Growth from 2020-2030



Services once provided by physicians are more often delivered by advanced practice professionals.²

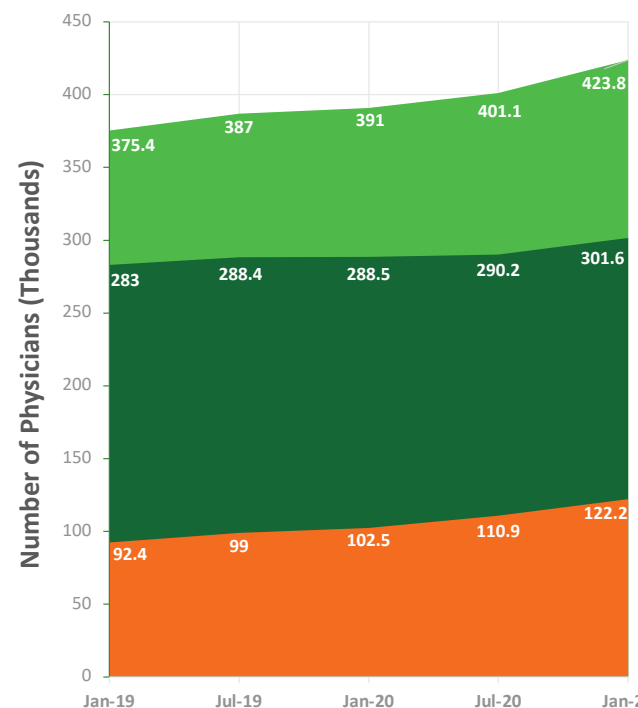
Number of Large Practice Mergers and Acquisitions per Year Since 2000



Large practice consolidation has increased significantly.²

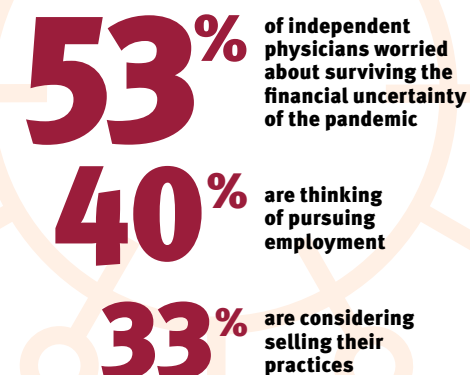
COVID-19's Impact on Physician Practice Ownership and Employment Trends During the First Nine Months of the Pandemic

Avalere Health researchers studied the two-year period between January 1, 2019 and January 1, 2021 to study COVID-19's Impact on physician employment trends during the first nine months of the pandemic.⁴



- 48,400 physicians left independent practice and became employees of hospitals or other corporate entities—22,700 of that shift occurred after the onset of COVID-19
- This represents a 12% increase in the percentage of employed physicians over the two-year study period
- Hospitals and other corporate entities acquired 20,900 additional physician practices over the two-year period, resulting in a 25% increase in corporate-owned practices

Independent Physicians Are Financially Stressed by the Pandemic⁵



Preserving Medical Liability Protections

As of this year, 29 states have laws in place that limit damages in medical liability actions, most without exceptions or adjustments for inflation. Of these laws, states vary widely in the amount of the cap and type of damages that are covered. For example, under its Medical Injury Compensation Reform Act (MICRA), California has a \$250,000 cap on non-economic damages. By comparison, Virginia has a \$2.5 million cap on total damages, which increases annually through the year 2031.

In states that lack meaningful limits on liability, nuclear verdicts and increasing claims severity in medical liability cases have forced many MPL insurance companies to either leave the market or raise costs substantially. As a result, physicians in these states are choosing to stop practicing medicine, abandon high-risk parts of their practices, or move their practices to other states.

State tort reform laws are continuing to erode as the constitutionality of such laws is consistently challenged. While several important COVID liability protections were signed into law over the past 18-plus months, ensuring the courts don't reverse medical liability reforms remains imperative.

CALIFORNIA: FIPA Puts MICRA Protections at Risk

MICRA marked California as the first state to reform its medical liability tort system and the act was upheld as constitutional in 2013. Since California enacted MICRA in 1975, other states followed. The MICRA limits apply only to non-economic damages (often referred to as "pain and suffering"), not economic damages (calculable monetary costs such as medical bills or loss of income). Recovery of economic damages has always been and remains uncapped under MICRA.

This coming November, however, California voters will consider whether to approve the Fairness for Injured Patients Act (FIPA), which would greatly reduce the protections for healthcare providers under MICRA. Among other things, FIPA would:

- Significantly increase the \$250,000 cap on non-economic damages for inflation initially with annual increases thereafter. Based on the current consumer price index (CPI), this would raise the cap in the first year alone to \$1.25 million.
- Increase attorney fees caps for inflation. Since 1987, attorney fees have been capped at 40% of the first \$50,000 recovered, then 33% of the next \$50,000, 25% of the next \$500,000, and 15% thereafter.
- Eliminate caps in cases of "catastrophic injury." Under FIPA, judges and juries would have discretion to eliminate caps in these cases.

NEW MEXICO: Cap Negotiations Prevent Service Disruptions

On April 1, 2021, New Mexico's governor signed into law House Bill 75, which made the most sweeping amendments to the New Mexico Medical Malpractice Act (MMA) since it was enacted in 1976. It created the two new caps on damages—a \$4 million limit for hospitals and a \$750,000 limit for independent physicians. The old limit was about \$600,000 for certain damages. The law was slated to go into effect January 1, 2022, but serious concerns were raised about definitions determining who in the healthcare system would be subject to the larger cap. Insurance carriers raised questions about how to handle independent physicians who sometimes work at hospitals or own and operate their own small clinics.

A group of independent physicians and medical practices said they were prepared to close their offices or curtail work on December 31 unless New Mexico revised the new medical malpractice law. As a result, with less than a week before the law took effect, the governor signed an emergency bill making changes to it in an attempt to avoid an interruption in healthcare services. Under the revision, the caps for independent outpatient healthcare facilities will instead be set at \$750,000 per injury or death for the next two years. They would then increase in future years. (Albuquerque Journal parts 1 and 2)

NEBRASKA: Failed Attempt to Substantially Raise Caps

A Nebraska bill attempted to more than double the state's medical liability cap to a maximum of \$10 million. Currently, the state has a \$2.25 million cap on total damages. The bill also attempted to change the caps for healthcare providers to \$5 million dollars (up from \$500,000) and, in the case of hospitals and their employees, an aggregate liability amount of \$30 million dollars (up from \$3 million). The bill failed to advance from the Judiciary Committee. (Nebraska Legislature)

OHIO: "Catastrophic Injury" Caps in Question

The Supreme Court of Ohio recently agreed to consider an appeal challenging the constitutionality of Ohio's statutory cap on non-economic tort damages. Ohio is one of nine states where lawmakers have passed laws capping the amount of money juries can award in civil lawsuits for lasting injury and impact that is non-physical, commonly referred to as "pain and suffering," not just in medical malpractice cases, but in all general tort lawsuits. The law limited the amount of money a person could win at a civil trial for non-economic losses to \$250,000. Ohio's laws did carve out exceptions for the caps not to apply to plaintiffs who suffered "catastrophic injuries" that were physical in nature, such as the loss of a limb. A recent case argued that the law is a violation of the Constitution's right to equal protection for those who suffer non-physical injuries. (Supreme Court of Ohio; Cleveland.com)

PENNSYLVANIA: Redefining "Cause of Death"

A Pennsylvania court decision redefines the universally understood term "cause of death." And if the ruling is allowed to stand, it would upend the state's medical liability climate. In an opinion, the Superior Court of Pennsylvania said that "cause of death" is ambiguous and interpreted it to mean the "conduct the plaintiff alleges led to the decedent's death." That definition would allow plaintiffs to file lawsuits beyond the two-year statute of limitations established in the bipartisan Medical Care Availability and Reduction of Error Act (MCARE). (American Medical Association)

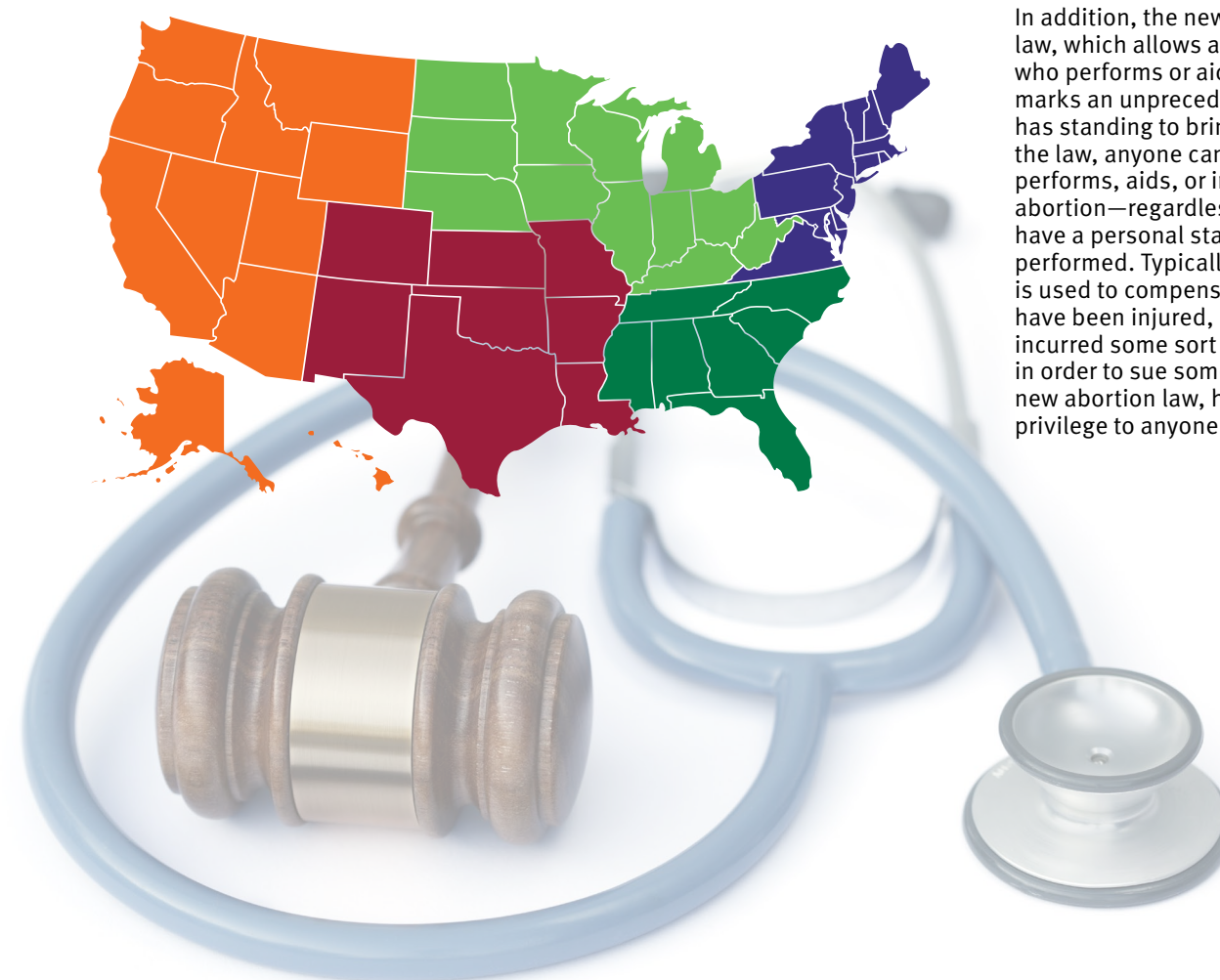
MISSOURI: Limit to Non-economic Damages Upheld

Missouri's highest court recently considered a case to determine whether a 2015 law limiting what a jury can award for non-economic damages in a medical liability lawsuit is constitutional. The complaint challenged the constitutionality of the state's medical liability statute and its non-economic damages limits, which are capped at \$400,000 for non-catastrophic and \$700,000 for catastrophic injuries. The case was resolved in the physicians' favor. In upholding the state legislature's limits on non-economic damages, the Missouri Supreme Court handed tort reform advocates a victory. (St. Louis Record)

TEXAS: Federal Lawsuit Challenging Cap

Texas' tort reform came into being not only as a result of state legislation, but also a voter-approved constitutional amendment in 2003 that ratified the Texas Legislature's right to establish the non-economic damage cap. The \$250,000 limit has survived earlier court challenges at both the state and federal levels. However, Texas medical malpractice plaintiff lawyers recently filed a class action lawsuit in a federal court challenging the constitutionality of the \$250,000 cap. The suit alleges that the cap violates the Seventh Amendment of the U.S. Constitution and argues that the cap impairs the jury function of determining compensatory damages. (Texas Civil Justice League)

In addition, the new Texas abortion law, which allows anyone to sue anyone who performs or aids in an abortion, marks an unprecedented change to who has standing to bring a lawsuit. Under the law, anyone can sue anyone who performs, aids, or intends to aid in an abortion—regardless of whether they have a personal stake in the abortion performed. Typically, in tort law, which is used to compensate people who have been injured, a person must have incurred some sort of personal harm in order to sue someone else. This new abortion law, however, gives that privilege to anyone. (Texas Tribune)



Loss Costs on the Rise in MPL

In its May 2021 Market Segment Report, AM Best maintained a negative outlook on the MPL market. The report points to rate adequacy as a particular concern with a prolonged soft market, rising loss costs, and market shifts away from independent physician insureds putting pressure on insurers to adjust product offerings and portfolio pricing strategies.¹ While AM Best sees rate momentum as still generally positive, the report notes that underwriting and operating results are likely to continue putting pressure on MPL insurers.

Rising loss costs are of particular concern for insurers, with nuclear verdicts, social inflation, and the erosion of tort reform in recent years having an impact. AM Best notes that in the five years from 2016 to 2020, loss & LAE ratios increased 11.2 percentage points from 73.9% to 85.1%.¹

Fall-Out from the Pandemic

While court closures, a decrease in non-pandemic-related healthcare utilization, and immunity laws protecting healthcare providers from pandemic-related liability protections helped reduce claims frequency significantly in 2020, challenges to the immunity laws are expected and the drop in frequency is likely to be short-lived.¹

The potential short-term and long-term impacts of the pandemic on loss costs also remain uncertain and may include an influx in claims stemming from pandemic issues. Delayed diagnosis or treatment of COVID-19, denial of non-essential medical treatment due to overloaded healthcare facilities, and failure to protect patients from exposure to the virus could all lead to a surge in claims.²

There are further uncertainties related to the expanded use of telemedicine during the pandemic.¹ Telemedicine growth peaked in April 2020 increasing to 78x February 2020 levels and has since stabilized to 38x pre-pandemic levels,³ with a large portion of this increased usage likely involving providers and patients new to the technology. While there was not a significant number of telemedicine-related liability claims by mid-2021, an increase in the future is possible with continued growth in use of the technology.¹

Nuclear Verdicts & Social Inflation

A review of claims data in the National Practitioner Data Bank shows that the average indemnity on medical liability claims increased 11% from 2015 to 2019. Additionally, while representing a small portion of all verdicts (10.2% in 2020), the frequency of nuclear (aka, shock) verdicts in the same period with payments greater than \$1M increased 4.4% and payments greater than \$2M increased 3.6%.⁴

Public opinion plays a large role in social inflation. Nuclear verdicts are buzz worthy so their visibility is higher than more pedestrian verdicts. This increases the expectations of injured parties and encourages malpractice attorneys working on contingency basis that higher verdicts are possible.⁵

Societal attitudes toward corporations, changes in beliefs about entitlement to awards, an increasingly generalized opinion that “someone should pay” when injury happens regardless of negligence, and “a heightened emotional undercurrent within society” are all raising expectations of award values and impacting the size of awards. As average awards increase and shock verdicts become more frequent and visible, jurors may also see larger verdicts as less unusual and plaintiff attorneys are incentivized to initiate larger lawsuits.^{5,6}

Roll-Backs of Tort Limitations

Since 2010, five states that had caps on non-economic damages had those caps struck down as unconstitutional with no new reforms in place as of 2020. Two of these caps were struck down in 2019 and 2020. In that same period, only two states enacted new caps that remain in place as of 2020.⁷ Even with limits on non-economic damages, however, the size of economic damages has become so high that caps on non-economic damages have little material impact on total awards.¹

Sources

1. AM Best. <https://news.ambest.com/newscontent.aspx?refnum=233392>
2. AM Best. https://www3.ambest.com/ambv/sales/bwpurchase.aspx?record_code=306905
3. McKinsey & Company. <https://www.mckinsey.com/industries/healthcare-systems-and-services/our-insights/telehealth-a-quarter-trillion-dollar-post-covid-19-reality>
4. National Practitioner Data Bank. <https://www.npdb.hrsa.gov/analysisistool/>
5. WTW (formerly Willis Towers Watson). <https://www.willistowerswatson.com/en-US/Insights/2021/05/insurers-are-in-the-grips-of-social-inflation>
6. AMTrust Financial. <https://amtrustfinancial.com/blog/small-business/social-inflation-insurance-industry>
7. American Tort Reform Association. <https://www.atra.org/resources/tort-reform-records/>

“...from 2016 to 2020, loss & LAE ratios increased 11.2 percentage points from 73.9% to 85.1%.”

Industry Organizations and Their Insights on the MPL Market

Industry organizations provide industry insight and statistics which reveal the state of the medical professional liability insurance market—including predictions on rates, stabilization of the market, and other key factors which could impact profitability throughout the year.

“...in October 2020, when 31.1% of premiums were reported to have increased from the previous year...”

AM Best

AM Best maintains a negative outlook on the medical professional liability market, according to its Market Segment Report published in May 2021. Rising loss costs, prolonged soft market conditions, and the shrinking pool of independent physician insureds continue to put pressure on insurers to adjust product offerings and portfolio pricing strategies.¹ Generally, rate momentum remains positive for the industry as a whole. However, AM Best does note in the report that operating and underwriting results are likely to be a continuing source of pressure for carriers.

An AM Best Financial Strength Rating (FSR) is one of the most respected tools for assessing the financial strength of an insurance carrier. In 2021, AM Best affirmed the A (Excellent) ratings for ProAssurance Corporation and ProAssurance Group members, as well as the A- (Excellent) ratings of NORCAL Insurance Company and NORCAL Group Members. These ratings reflect AM Best’s opinion that our companies have an excellent ability to meet their ongoing insurance obligations.

| Rate predictions | | |
|--|--------------------------------|--|
| | Trend | Range |
| Primary | ▲ | +5% to +25% |
| Excess | ▲ | +15% |
| Hospital | ▲ | +5% to +25% |
| Allied health | ▲ | +5% to +15% |
| Physicians | ▲ | +5% to +15% (particularly venue dependent) |
| Loss affected accounts | Highly variable rate increases | |
| Rate predictions: Health care professional and general liability | | |

WTW (formerly Willis Towers Watson)

Willis Towers Watson reports that, overall, rate deceleration is expected in the hospital and allied space throughout the coming year, and terms and conditions will continue to stabilize. Overall, COVID-related exposures have been addressed, though cyber and sexual abuse/molestation exclusions are still often managed on a case-by-case basis. Self-insured retentions and deductibles also appear to be on the rise in most healthcare segments, including the use of captives.

Conversely, in the physician liability market, WTW notes high industry combined ratios, and continued increases in claim severity is continuing to fuel modest rate increases. M&A activity and the negative impact of physician carrier consolidation is also impacting insurance program pricing and structures. Telemedicine and COVID-19 continue to generate uncertainty which may be potential areas of litigation.²

American Medical Association

The American Medical Association provided their policy research perspectives in March 2021, which summarizes changes in manual premiums for select geographic locations from carriers from 2011 through Q3 2020. The data is taken from the Annual Rate Survey Issues of Medical Liability Monitor. Overall, the data revealed premiums in 2019 and 2020 increased at levels not seen in over 15 years. In 2020, 31.1% of premiums were reported to have increased from the previous year—the highest proportion since 2005.

The report further notes, “Insurers have started raising premiums in response to deteriorating underwriting results, lower loss reserve margins, and lower returns on investment. They indicate that increases in premiums are needed to ameliorate those structural problems. Thus, they expect that, barring unforeseen circumstances, insurers will sustain or even push for higher premiums...”

Sources:

1. AM Best. <https://news.ambest.com/newscontent.aspx?refnum=233392>
2. Insurance Marketplace Realities 2022 – Healthcare Professional Liability, WTW (formerly Willis Towers Watson). <https://www.wtwco.com/en-US/Insights/2021/11/insurance-marketplace-realities-2022-healthcare-professional-liability>
3. New Data Show the Highest Prevalence of Professional Liability Increases in 15 Years, José R. Guardado, American Medical Association. <https://www.ama-assn.org/system/files/2021-03/prp-mlm-premiums-2020.pdf>

2021 Shock Verdicts & Judicial Hellholes in the U.S.

2021-2022 Judicial Hellholes Report

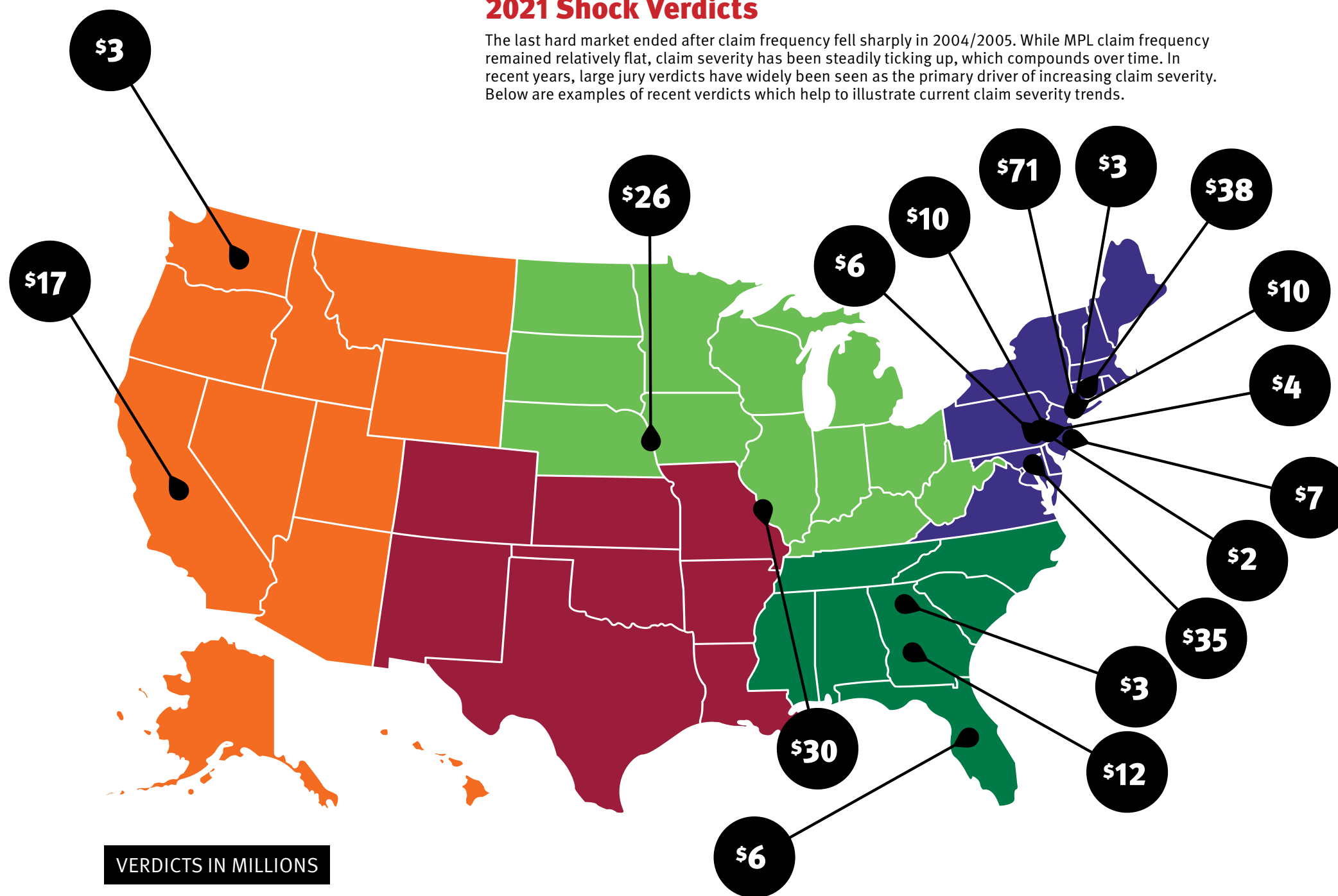
The American Tort Reform Foundation issued its [2021-2022 Judicial Hellholes® report](#) mid-December 2021. The organization has created this list since 2002, identifying documented places where judges and civil cases “systematically apply laws and court procedures in an unfair and unbalanced manner.”

The 2021-2022 list

- California**—The report cites several issues, such as Proposition 65, PAGA, and the Song-Beverly Consumer Warranty Act litigation which generally increase litigation costs and create more opportunity for plaintiffs in the state. More of interest to the MPL industry are the significant increases in state opioid litigation, as well as the lack of liability protections for COVID-19 exposures.
- New York**—New York is seeing a surge in nuclear verdicts, several of which were medical malpractice related. The New York Law Journal stated this trend was “turning the New York court system on its head” and is “contributing to the demise of New York State.”
- Georgia Supreme Court**—In September 2021, the Georgia Supreme Court ruled that registering to do business in Georgia subjects out-of-state businesses to lawsuits in Georgia state courts regardless of the suit’s connection to Georgia. Further adding to Georgia’s “Hellhole” status is “Roberts v Unison Behavioral Health,” where the Georgia Supreme Court ruled that a plaintiff fulfills the notice of requirement by providing a definition of the statute rather than explaining the injuries involved in a particular case.
- Philadelphia Court of Common Pleas and the Supreme Court of Pennsylvania**—Pennsylvania is considered a hotspot for mass tort litigation, specifically targeting the pharmaceutical and medical device companies. Judges have also been known to loosely interpret the state’s venue rule, which has led to accusations of forum shopping that has led to cases with little to no connection to Philadelphia being tried there.
- Cook, Madison, and St. Clair Counties, Illinois**—In May 2021, S.B. 72 was signed into law. Under this rule, prejudgment interest begins to accrue the day the action is filed at a rate of 6% annually. Specific to these jurisdictions, S.B. 2406, passed in 2021, broke up the state’s 20th Judicial Circuit court, expanding judicial representation in an area known for a plaintiff-friendly approach.
- Louisiana**—The 2020-2021 Judicial Hellholes report expressed optimism that the legislative environment in Louisiana was improving. However, the organization reversed this statement when S.B. 43, a bill focused on limiting misleading lawsuit advertising practices and solicitations for legal services, was vetoed by the Governor.
- City of St. Louis**—Of particular interest in 2021-2022 is the regular practice of allowing plaintiff’s experts to include testimony determined to not be based in science. S.B. 591 also introduced a new framework for punitive damages which allows plaintiffs to argue that treatment decisions were negligent—in spite of the fact that punitive damages are supposed to be reserved for egregious cases of misconduct.
- South Carolina Asbestos Litigation**—This legislation has a reputation for leading to unwarranted sanctions, low evidentiary requirements, and discovery abuse.

2021 Shock Verdicts

The last hard market ended after claim frequency fell sharply in 2004/2005. While MPL claim frequency remained relatively 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.



Links to the case summary for each shock verdict can be found at ProAssurance.com/MPLMarketDynamics.

Medical Economics Top Challenges for Healthcare Professionals 2022

Each year, Medical Economics surveys their readership to help determine the top challenges medical professionals will face in the coming year. Usually this is presented in a 10 point list. However, the list was shortened to five, with many items being condensed into larger summaries. All items that appeared on the 2022 list have previously been listed as a top challenge, though many summaries on this year's list cite additional frustrations or roadblocks due to the ongoing COVID-19 pandemic.

Top Challenges for Physicians



Hiring and retaining staff—Hiring staff was a common challenge reported by physicians in previous years, but the ongoing pandemic has severely increased this issue. Shortages in front desk, human resources, billing, and other back-of-house roles have limited the ability to successfully recruit and onboard new employees. Fears surrounding COVID-19 and the overall state of the healthcare industry—including issues commonly associated with the “Great Resignation”—have also limited those applying for healthcare-related positions.



Electronic health records—A recent study by the American Medical Association found EHRs contribute to 11-60% of burnout cases experienced by physicians in 2021. With new information-blocking rules expected to take effect in 2022, it is anticipated that even more EHR frustrations will emerge as the year goes on.



Prior authorizations—This is one of many avenues where physicians cite third-party interference as a challenge in their medical practice. Survey respondents stated that the back-and-forth needed to navigate prior authorizations costs their practice time and money—and puts their patients at risk.



Increased competition—Alternative business models developed by tech corporations or pharmaceutical companies are increasingly moving into the primary care space. Telehealth-only providers also secured a niche at the height of the pandemic. While the use of telehealth has fallen since 2020, it still remains a significant source of primary care and referral services. Traditional practices must now compete in this increasingly complex landscape.



Loss of trust in physicians—A survey by Morning Consult in November 2021 revealed only 44% of Generation Z trusted the healthcare system. Some survey responders cite the increasing trend of physicians being employed by large healthcare systems as contributing to this trend. Patients using the internet to seek out their own health information has also played a part in the breakdown of communication between physicians and patients.

Ties that Bind

Monthly Insights for Selling to Healthcare Professionals

THE SECRET TO SUCCEEDING IN NEW MARKETS

Let the Experts Be the Experts

As the independent physician market for medical professional liability insurance shrinks, you're likely targeting other healthcare professionals such as physician assistants, nurses, and medical assistants. Thanks to your experience and ProAssurance's ability to provide coverage for various healthcare providers, you're well-positioned to enter these markets.

Medical professionals share a common trait that can help you to become familiar with new markets—they are experts. Here's how to use this to your advantage:

Let the experts be the experts.

Experts don't like being pushed or told what to do, yet they're almost always comfortable answering questions related to their expertise. They'll even tell you exactly how to do business with them if you ask the right questions.

These are the steps to letting the experts be the experts:

- Ask good questions.
- Let the prospect talk—don't interrupt.
- Listen carefully to understand their needs and concerns.
- Paraphrase what they told you to confirm you understand their needs.
- Position your product options to fulfill their stated needs and best interests.

If there's one area where a little extra work will pay off, it's in step one—asking good questions. Questions not only gather information but also direct the discussion. Doctors and other HCPs are famous for taking over conversations; specific questions help them stay on topic.

Here are some ways to prepare for meetings with the experts in new markets:

- **Research the targeted market.** How is this professional involved in patient care? What are the critical liability concerns and coverage issues? Look for potential risks that might not be obvious from an MPL perspective.
- **What can you learn about the prospect, both professionally and personally?** Search their name on Google and add their job title to the search as a modifier. Social media platforms such as LinkedIn generally offer a business profile, while Facebook and Instagram tend to be more casual. If you can find their website or their employer's website, read about the services offered. This information could provide some insight into any liability exposure. For example, if a provider states they use the latest treatment therapies, you might want to discuss their involvement in those treatments to determine any associated risks.
- **Create questions to guide the conversation and keep it on track.** Ideally, the prospect should do most of the talking. Experts like to talk. *Let them*, as long as they stay on topic. Use questions to redirect their focus if they go off on tangents. Don't forget to include questions to spotlight issues where you can showcase ProAssurance's strengths.
- **Prepare questions to reveal and clarify common objections.** Experts tend to have lots of concerns but don't always verbalize them. When you hear an objection, ask questions to gain a deeper understanding of the issue. Guiding the prospect through the thought process could be all that's needed to reconcile the concern for themselves.

New markets can be exciting and challenging. They might seem unfamiliar at first, but when you trust your experience and *let the experts be the experts*, you'll master those markets in no time at all.



If there's one area where a little extra work will pay off, it's in step one—asking good questions.



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.

THE Comments Section

This month's topic: Docs hit with fewer malpractice suits as COVID lockdowns curtailed procedures

U.S. physicians saw a decline in malpractice lawsuits during the pandemic, likely the result of performing fewer procedures during lockdown, according to the [Medscape Malpractice Report 2021](#).

A total of 4,358 doctors across 29 specialties participated in the 10-minute online Medscape member survey, conducted from May 21 through August 28, 2021.

In the past year, 42% of primary care physicians were sued, down from 52% in 2019, the year of the most recent survey. Likewise, specialists saw a decrease in lawsuits, with 56% being sued in 2020 through mid-2021, compared to 62% in 2019, according to the report.

However, in 2021, plastic surgeons and general surgeons were sued the most (83%), followed by orthopedists (81%) and urologists (80%).

"Outside circumstances do play a role in the amount of lawsuits," the report's author, Leslie Kane, senior director at Medscape Business of Medicine, told Fierce Healthcare. "One of the phenomena noted during COVID was that people were on Zoom meetings, often for hours a day, and had time to look at their faces in-depth and detail. This definitely led to a larger demand for plastic surgery and more potential for lawsuits."

About half of all U.S. doctors have been sued at least once, exacting a heavy burden on their time, reputation, and emotional health, no matter the outcome. Most often, the suits allege failure to diagnose medical problems at all or in a timely fashion or to treat complications following a procedure.

None of the Medscape survey respondents reported being sued for a reason related to COVID-19, although some physicians (13%) expressed concerns that they could find themselves in that predicament in the future.

[View the full article.](#)

Source: Fierce Healthcare

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.

"While the headline of the article is accurate, it is reflective of the early pandemic environment and does not represent a universal truth. The number of claims filed has fallen in many states but not in all states. Claims most likely will revert to their prior levels or even increase as court system closures and delays have caused a 'pinch in the pipe' that should reopen."



Rob Francis
Executive Vice President, HCPL

"The statistic about the surveyed doctors not trusting 25% of their patients is troubling and indicates a contributing cause of physician/provider burnout. I continue to be surprised that more healthcare consumers do not appear to make the connection that frivolous suits and run-away verdicts create costs that ultimately have negative impacts across society as a whole."



Shep Tapasak
Senior Vice President,
Specialty Underwriting

"The top reasons for a lawsuit (failure to diagnose, delay in diagnosis, and delay in treating complications), is no surprise. Our claims data suggests the same. Better documentation was something physicians consistently said they could improve. Physicians also said they would be more mindful when selecting patients and better review diagnostic tests. What surprised and saddened me was that 25% of sued physicians indicated they no longer trusted patients, and 7% left the profession. Trust is foundational to any healthy and engaged relationship."



Lisa Van Duyn
Vice President, Risk Management

"This article highlights the general experience of most medical liability carriers during the pandemic: claims are down...for now. However, in Underwriting we believe this to be primarily because of court shutdowns and slowdowns. The expected 'healthcare halo' appears to not have manifested, as high verdicts are already being handed down by juries, now that courts are reopening. Cautious optimism is the name of the game, with Underwriting attempting to well position the Company for an increase in claims severity and possible claim filings in the future."



Heather Spicer
Vice President,
Underwriting,
Southeast Region

"While COVID-19 may have created a temporary respite to a deteriorating claims trend, rising claims severity and increasing regulatory pressure on tort reform signal concern for what is to come. Partnering with a carrier that has the expertise to not only vigorously defend these suits but also stand with the healthcare community to defend the tort reform that has been so successful in controlling the cost of medical malpractice insurance is more important than ever."



Mike Rosenthal
Senior Vice President,
Business Development

"The temporary reduction in malpractice lawsuits during the pandemic has been the silver lining in an otherwise very difficult period of time. Unfortunately, the pandemic has exacted a heavy toll in the form of burnout in healthcare providers. Staffing shortages, burnout, and resulting pressures on providers will need to be closely monitored to ensure these factors do not increase claim activity."



Wade D. Willard
President & COO,
Preferred Physicians
Medical (PPM) Risk
Retention Group

"This article highlights patient perception and reminds us of the importance of the four part informed consent process: discussion, education, documentation, and use of consent forms. One key aspect of education is to ensure patient expectations for recovery and outcome are realistic. The better the patient understands the risks and benefits of a procedure, the more favorable their outcome perception will be."



Kelly Riedl
Senior Risk Management
Advisor

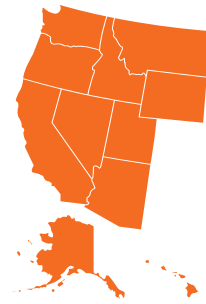
ProAssurance Regional Underwriting Model

We have transitioned ProAssurance and NORCAL standard accounts to a regional underwriting model. Your underwriting team will be in touch to make introductions. Please feel encouraged to contact your underwriter at any time with any questions or business needs. You are also welcome to contact your regional underwriting leadership.

The Underwriting department is in an exciting phase and prepared for growth. In addition to the synergies developed through the NORCAL transaction, we are excited to bring in new team members with fresh ideas and perspectives to further energize the department. We want to continue to be a source of expertise for you and your group as we continue to build a strong, productive relationship with our agency and broker partners.

West Underwriting Leaders

Lucy Sam, Vice President
Sally Kreul, Assistant Vice President
Chrysetta Reid, Manager

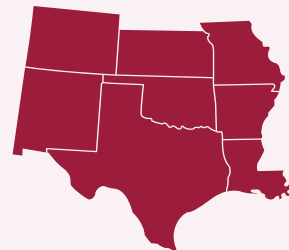


West Leaders

Claims: Gina Harris GinaHarris@ProAssurance.com or 702-697-6424
Risk Management: Katie Theodorakis KatieTheodorakis@ProAssurance.com or 415-735-2154

Southwest Underwriting Leaders

John Alexander, Vice President
Glenn Brown, Manager
Joel Balgord, Manager

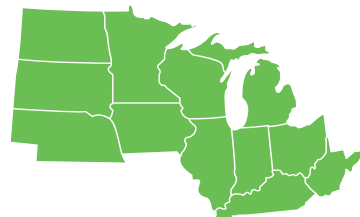


Southwest Leaders

Claims: Mike Severyn MikeSeveryn@ProAssurance.com or 517-347-6262
Risk Management: Mallory Earley MalloryEarley@ProAssurance.com or 205-802-4789

Midwest Underwriting Leaders

Debbie Farr, Assistant Vice President
Gail Schroeder, Director
Muriel Wolfe, Director

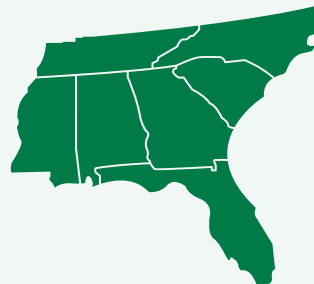


Midwest Leaders

Claims: Scott Hunsberger ScottHunsberger@ProAssurance.com or 317-884-5638
Risk Management: Tina Santos TinaSantos@ProAssurance.com or 317-884-5649

Southeast Underwriting Leaders

Heather Spicer, Vice President
Linda Fortson, Director
Tammy Sternberg, Director



Southeast Leaders

Claims: Frank Bishop FrankBishop@ProAssurance.com or 813-969-4559
Risk Management: Ginger Kelley GingerKelley@ProAssurance.com or 904-309-8132

Northeast Underwriting Leaders

Tim Pingel, Assistant Vice President
Doug Aldrich, Manager



Northeast Leaders

Claims: Mark Lightfoot MarkLightfoot@ProAssurance.com or 202-969-3102
Risk Management: Nichole Pieters NicholePieters@ProAssurance.com or 415-735-2245

Invite Claims or Risk Management Personnel to Your Sales Discussions

Partnering to Grow Your Business

Did you know our Claims and Risk Management professionals are available to help you engage your customers—whether at the point of sale or in discussions about potential risks?

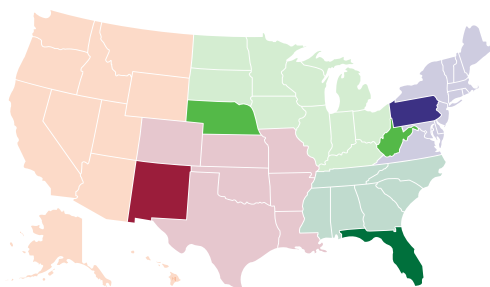
When talking with potential clients, we know the importance of being able to address their liability concerns and claims handling questions. We can work with your clients to identify risks and develop goal-oriented solutions to help improve patient safety and satisfaction while preventing losses.

Our seasoned professionals are at-the-ready to help you navigate the complexities of the ever-changing healthcare industry using specialized knowledge of healthcare risk management issues and decades of experience defending claims. ProAssurance advisors have a wide range of backgrounds, including prior experience as healthcare administrators, attorneys, registered nurses, clinicians, and quality/performance improvement professionals.

We'd be happy to give an overview of the many benefits we provide our insureds, including valuable risk management resources, superior service, and added benefits such as cybersecurity coverages. Our Risk Management advisors can address patient safety, minimizing risk, and improving the defensibility of claims by providing comprehensive assessment and training resources.

If you would like to invite a ProAssurance Claims or Risk Management professional to be part of your sales conversations, just give your regional leader a call.

MPL State News



WEST VIRGINIA

West Virginia Liability Laws Withstand Challenge—In West Virginia, the state Supreme Court of Appeals recently ruled that the landmark Medical Professional Liability Act (MPLA) applies broadly to all services related to patient care, eliminating an attempt to circumvent the applicability of the statute. The Supreme Court of Appeals of West Virginia issued a new opinion that finds that litigants cannot characterize claims as “corporate” or “general” negligence in an attempt to avoid the provisions of the MPLA. In the case, plaintiffs argued that the corporate conduct they were alleging in their amended complaint did not constitute healthcare services under the MPLA, and, therefore, it was not subject to the pre-suit notice requirements of the law. The court ruled against the plaintiffs and their interpretation of a judicial precedent, maintaining that alleged corporate negligence claims fall within the purview of the MPLA. Their explanation stemmed from the fact that “anchor” healthcare claims and “ancillary” healthcare claims that arise “in the context of rendering healthcare” are governed by the MPLA, and litigants cannot avoid its application with “creative pleading.” (Protect Patients Now!)

NEW MEXICO

New Mexico Governor Signs Medical Malpractice Reform Revision

Revisions to New Mexico’s Medical Malpractice Act took effect at the start of the new year—including the recently signed House Bill 11, which will help independent healthcare providers secure insurance coverage. Through the passage of House Bill 75 during the 2021 legislative session, the state expanded the list of qualified healthcare providers covered under the act and addressed caps on medical malpractice claims along with other malpractice reform.

The original language of the 2021 bill left independent providers unable to find insurance for the new year, leading to the introduction of HB11 in a special session. State Representative Dayan Hochman-Vigil, a co-sponsor of the bill, said the new legislation clarifies the original intent of lawmakers.

“A lot of the insurance carriers were concerned that by including any reference to a parent agency, that could then lead one to believe that these independent providers were apparent agents of a hospital, which had a \$4 million cap beginning January 1, 2022,” Hochman-Vigil said. “The original intent of HB75 was to only have a \$750,000 cap for medical malpractice injuries as it refers to independent healthcare providers.” Hochman-Vigil said the new revisions also include accommodation for independently owned outpatient facilities. (KRWG)

CALIFORNIA

California eRx Mandate Took Effect January 1

As of January 1, 2022, almost all prescriptions written in California must be transmitted electronically. Physicians should have already implemented electronic prescribing in their practices.

The law (AB 2789) is partially based on the Medicare electronic prescribing for controlled substances (EPCS) requirement. Although the Centers for Medicare and Medicaid Services in the 2022 Medicare Physician Fee Schedule delayed implementation of the EPCS requirement for an additional year, to January 1, 2023, that does not have any direct effect on the state requirement. (California Medical Association)

MAINE

Leapfrog Names First Ever Top State of the Decade for Patient Safety

The Leapfrog Group, a national watchdog organization of employers and other purchasers focused on healthcare safety and quality, honored the state of Maine with the Leapfrog Top State of the Decade for Patient Safety Award for unparalleled achievements in patient safety.

Maine has been the top-ranked state in percentage of “A” hospitals by The Leapfrog Group more times than any other state. The state has ranked first among states in nine of 20 Grade updates, and it has been ranked in the top five among states for an additional seven grade cycles. (Leapfrog Group)

NATIONAL

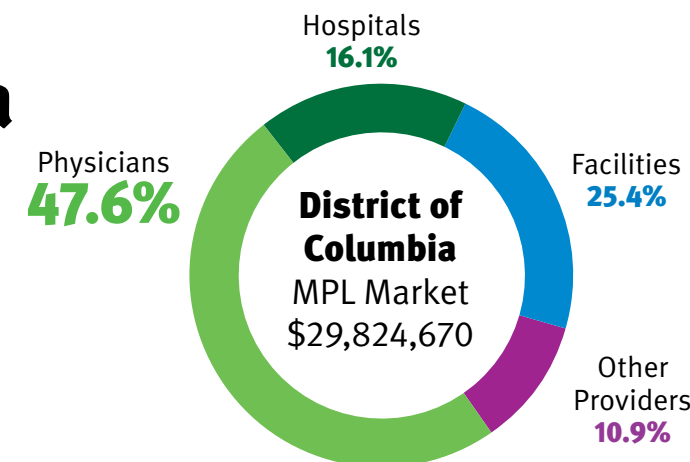
Insurance Rate Hikes Expected to Moderate as Capacity Rises

Commercial insurance buyers in North America should see relief from the hard market next year with a few lines seeing flat renewals or even decreases, according to a report from WTW (formerly Willis Towers Watson PLC).

Several lines, such as cyber liability, though, remain tough and buyers should still expect significant rate increases. (Business Insurance)

MPL State Profile District of Columbia

- 46** 2020 Rank in MPL Market
- 1** 2020 ProAssurance Rank
- 14** 2020 NORCAL Rank
- 1** 2021 ProAssurance Post-Merger Rank



Tort Laws

- **Limits on damages for pain and suffering:** none
- **Limits on contingent attorney fees:** none
- **Reform of collateral source rule:** none
- **Periodic payment of future damages:** none
- **Statute of limitations:** 3 years from discovery
 - › Effective 1963 (§12-301)

Pre-Judgment Interest

Tort Actions Pre-judgment interest is neither authorized nor forbidden by statute. However, a court may award interest, in its discretion, if needed to make the plaintiff whole.

ProAssurance Specifics

ProAssurance acquired NCRIC Group, Inc. in 2005. NCRIC had been serving the District and surrounding states since 1980.

Primary limits: \$1M/\$3M

WASHINGTON D.C.

Opioids More Powerful than Fentanyl Found in D.C. as Overdoses Rise

Forensic analysts have alerted the District of Columbia’s Department of Forensic Sciences (DFS) that there is a new synthetic opioid circulating in the illicit drug supply in the city as it continues to grapple with a flood of fatal overdoses.

Scientists at the DFS found the synthetic drugs during a routine study of used syringes in September and October, The Washington Post reported. The opioids—called protonitazene and isotonitazene—were found to be several times more potent than fentanyl. (TheHill.com)

Malpractice Verdicts in the District

The District of Columbia Courts website maintains [reports of claim statistics](#) for each year: however, the most recent data available is from 2019.

This data does highlight a \$14M jury verdict, one of the highest in the District’s history. The case involved a member of the U.S. military who suffered bilateral eye damage due to undergoing neck surgery in the prone position (meaning the patient was lying face down).

The District of Columbia also has [promising numbers](#) in regards to COVID-19 vaccine administration. As of the week of January 17, 2022, an estimated 90.2% of residents were partially or fully vaccinated—with an estimated 68.7% fully vaccinated.

Physician Environment in the District

Due to its small size, there is a great deal of physician competition in the District. [WalletHub](#) ranks Washington D.C. as having some of the lowest wages for doctors nationwide. Competition for physician jobs in the district is also projected to be some of the highest in the country by 2028.

Pending Legislation

B 24-0061 – Introduced

Prohibits factoring in race, ethnicity, or gender when determining past, present, or future damages for lost earnings or reduced earning capacity in MPL claims.

ProAssurance is the endorsed carrier for the Medical Society of the District of Columbia (MSDC) and has been since 1980.

Physicians in the District can also participate in ProAssurance’s longevity credit program. Physicians receive a 3% premium credit after three consecutive years of renewals. The credit increases 1% every year thereafter, up to 10% in total.

January Claims Rx Now Available

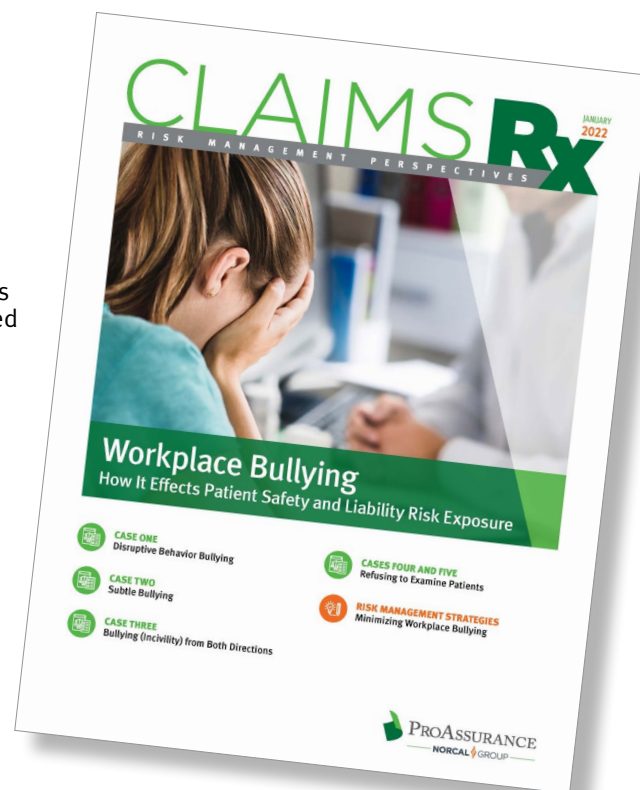
The combined January issue of Claims Rx, Workplace Bullying, is now available.

Studies suggest that individuals who work in healthcare experience one of the highest levels of bullying in the American workforce. This article provides strategies for preventing and responding to bullying using case studies based on closed claims.

Claims Rx is a monthly publication featuring claims-based learning or frequently asked policyholder questions, and risk management advice on both clinical and administrative topics. Typically each Claims Rx provides an opportunity for NORCAL Group insureds to earn AMA PRA Category 1 Credit™ at no additional cost. After reading an article, insureds can complete a post-activity quiz through MyACCOUNT or the MyNORCAL CME mobile app to receive their CME certificate.

Previous Claims Rx issues are available in the [online directory](#).

ProAssurance legacy agents may email AskMarketing@ProAssurance.com to request copies of Claims Rx issues. More information about our new, combined risk management offerings—including information on potential policy discounts and CME credit—will be featured in the upcoming March ProVisions.



Reminders

ProAssurance Specialty Name Change

Effective December 31, 2021, ProAssurance Specialty Insurance Company, Inc. merged with and into affiliate Noetic Specialty Insurance Company and changed its name to ProAssurance Specialty Insurance Company. This merger and name change will be reflected on a policy endorsement that will be attached to all policies in-force on the effective date of the change and distributed to affected policyholders.

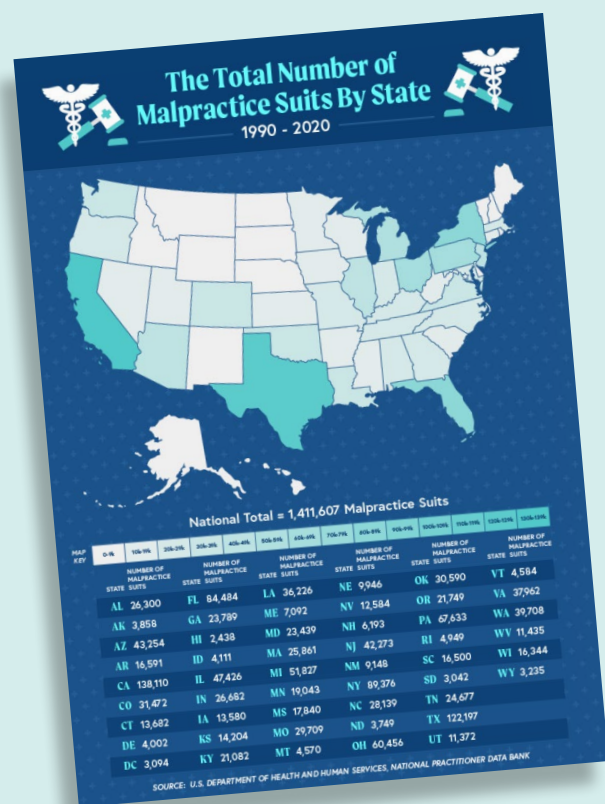
The merger is part of our internal statutory consolidation efforts to reduce administrative costs and increase efficiency. The merger of our E&S companies provides a stronger E&S company and allows us to write E&S business on a single company in all states. Service availability, and contacts for our ProAssurance Specialty insureds and agents will remain the same following this change.

NORCAL Electronic Payment Changes

Effective February 1, 2022 NORCAL policyholders will have two new electronic payment options—American Express® and PayPal.

On or after February 1, 2022 policyholders choosing to pay by credit card or PayPal will pay a 2.95% convenience fee. In the past, NORCAL has absorbed credit card fees for our policyholders by allowing our payment processor to pass those charges on to NORCAL. With recent increases in fees from credit card companies and our payment processor, we are unable to continue to absorb these fees. Beginning February 1, 2022 the credit card processor will charge a convenience fee on all credit card and PayPal payments to cover these costs. The convenience fee will be available for review before acceptance when paying online or by phone. To avoid the convenience fee, policyholders need to change their payment method to ACH.

We are encouraging policyholders who choose to change their payment method to ACH to do so with the "Recurring BillPay & Automatic Payments" option at norcal-group.com/pay prior to January 26, 2022 to allow sufficient time for processing the request.



An Analysis of Medical Malpractice Suits by State

The marketing team of Weiss & Paarz medical malpractice firm reviewed 30 years of data relating to medical malpractice suits across the U.S. collected by the Department of Health and Human Resources. This agency maintains a National Practitioner Data Bank that collects data on the number of successful malpractice suits in every state as well as the total sum of money awarded in those lawsuits. View the full article [here](#).

Maria Byers Joins ProAssurance as Business Development Representative



We are pleased to announce that Maria Byers has joined ProAssurance as a Business Development Representative for the West Region.

Maria comes to us after five years with Physicians Insurance, A Mutual Company in Seattle, WA. She managed their entire hospital book of business and large complex physician groups as a Sr. Account Manager, retaining 99.4% in renewals. She recently worked as their Sr. Business Development Manager building and maintaining solid relationships with brokerage firms and producers to expand a profitable partner pipeline. Though new to the insurance industry in 2017, her career spans two decades in healthcare with expertise in growing revenue through high customer satisfaction.

Maria has responsibility for managing the flow of critical communications to our agents and brokers regarding our new business appetite, product development, and other resources available to support a continuing ProAssurance competitive marketplace advantage. She will collaborate with Underwriting and other functional areas on renewal accounts assuring the highest level of service possible to our agent and broker partners.

Please join us in extending a warm welcome to Maria!

Her direct dial number is 415-735-2014 and her email address is MariaByers@ProAssurance.com.

PROASSURANCE
NORCAL GROUP

provisions

To subscribe or see previous issues,
visit ProAssurance.com/ProVisions.

