Time to Choose in Nebraska

Recent loss experience threatens the state's MPL excess liability fund

Nebraska's program for managing medical professional liability (MPL) claims has been hit hard over the past decade, leaving the state and many of its healthcare providers with difficult decisions that cannot be put off for long.

From 2011 through 2019, loss and expense ratios for claims-made business soared for the Excess Liability Fund. It pays MPL claim costs that exceed primary MPL policy limits of participating hospitals and healthcare providers.

The fund ratios ranged from a "low" of 114.1% in 2012 to a high of 328.9% in 2016, and have averaged 220.7% over the past five years. Year-end fund assets (which one would expect to grow over time) fell 2.3% from 2010 through the end of 2019. More dramatically, the fund's operating reserve decreased 30% over the same period.

30% **decrease in the fund's operating reserve from 2010 to end-of-year 2019.**

In response to deteriorating loss experience, the Nebraska insurance department has steadily increased the surcharge it assesses on the MPL premium of healthcare providers who voluntarily participate in the fund. The surcharge has been hiked four times in the past five years, rising from 22% in 2015 to the legal maximum of 50% in 2020.

As the surcharges have increased, the percentage of Nebraska MPL premium subject to the surcharges has decreased. In 2016, when the surcharge was assessed at 26% of MPL premium, providers representing 68% Nebraska's MPL premium participated in the fund; in 2019, when the surcharge was 45%, participating providers accounted for 56% of the state's MPL premium.

Relentlessly challenging conditions

Nebraska's Excess Liability Fund was established in 1976 as one of the first steps to stabilize MPL costs in Nebraska to help recruit and retain physicians and other practitioners in the mostly rural state.

Under current Nebraska law, MPL damages assessed against practitioners and facilities participating in the fund are capped at $2.25 million; damages against nonparticipating providers are not subject to the cap.

For their part, participants in the Excess Liability Fund are required to have at least $500,000 in MPL coverage per occurrence, along with an annual aggregate limit of at least $3 million for hospitals and $1 million for other practitioners. The fund will pay damages in excess of the applicable limits, up to the state's per occurrence limit of $2.25 million.

50% **is the legal maximum premium surcharge, which Nebraska hit in 2020.**

The fund also provides primary MPL coverage to some practitioners unable to acquire affordable coverage in the private market. Also, a small share of its business is written on an occurrence basis (as opposed to claims-made).

While most of the fund's exposure is for claims-made coverage, it must establish reserves for some "incurred but not reported" (IBNR) claims, particularly for "tail" claims potentially arising from providers who have retired, become disabled, or passed away.

Staff at the Nebraska insurance department attribute the financial stress on the Excess Liability Fund primarily to an increase in MPL losses throughout the country since the middle of the past decade.

According to the A.M. Best Company, "rising medical loss costs, along with relentlessly challenging and competitive market conditions" have led to "significant deterioration" of operating ratios for underwriting expenses, losses, and loss adjustment expenses for MPL insurers overall.

Options going forward

With the fund's MPL premium surcharge now at its statutory maximum of 50%, Nebraska's insurance director can only wait and see if the operating environment works to reverse the deterioration of the fund. If the fund balance is ever found to be inadequate to pay claims in a year, the director has the authority to assess a special surcharge on participating healthcare providers. The special surcharge would be for a total amount sufficient to cover an annual shortfall and would be assessed on each participant in proportion to what each has paid to the fund through regular assessments.

One thing is clear, however, according to insurance department spokesperson Peg Jasa: Injured claimants will not be left without compensation.

If action within the department's current scope of authority fails to turn things around, it will be up to the Nebraska legislature to reconsider the structure, funding, and operating authority of the Excess Liability Fund.

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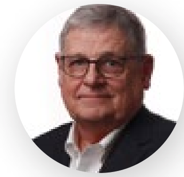

Emil Pela
Senior Market Manager

Emil Pela Retires

After a long and distinguished career in medical professional liability, Emil Pela, Senior Market Manager in Oklahoma, Kansas, Missouri, Arkansas, Tennessee, and Mississippi, will retire at the end of August.

Emil has been with ProAssurance for over 25 years, originally working for Medical Mutual in sales and marketing in the physician and dental markets. In that time, he has overseen business in around 20 states, moving between Birmingham, AL, Springfield, MO, and Oklahoma City, OK.

His strength lies in managing special projects, steering all parties in the right direction. Emil has been a great employee, always focusing on agency, broker, and medical society relationships. Our agent partners have always enjoyed his Texas humor, his hard work ethic, and support.

In retirement, Emil will spend more time with his wife, Christine, his two children, stepdaughter, and three grandkids. We also predict he will spend more time cheering on the St. Louis Cardinals.

Emil—You've been a good friend, mentor, and resource to many. You will be missed. Best wishes as you start your retirement.

REMINDER
OBRA Seminar Website Changed

On July 1 the OBRA seminar website changed from GNOSIS to Relias. All insured data, including course completion certificates, has moved to the new system. Any courses that were not completed by June 30 were unable to be transferred and will need to be restarted from the beginning.

Insureds access the new website like before—log into the secure services portal at ObGynRiskAlliance.com. From there, the method for accessing and taking courses also has not changed.

If you have questions, please contact Jason Esparza, Assistant Vice President, Programs, at **JasonEsparza@ProAssurance.com** or 512-314-4351.

MEDICAL PROFESSIONAL LIABILITY

COVID-19 Industry Articles

While the situation is changing rapidly, these articles help illustrate the impact of COVID-19 on the healthcare liability industry.

1. **After initial spike, telehealth visits are on the decline, report finds**—Data from 50,000 healthcare providers suggests that ambulatory practice visits have not rebounded to pre-pandemic levels. Written by Kat Jercich, Healthcare IT News, June 29, 2020.
2. **New research shows patient fears will limit the return to surgery**—Most hospitals have reopened for elective procedures, but 70% of surveyed organizations report they are running at less than 75% capacity. Written by Rick Halton, Becker's Hospital Review, June 23, 2020.
3. **Here are the specialties hit hardest by the COVID-19 pandemic**—Healthcare revenue dropped nearly 50 percent for specialties such as dermatology, oral surgery, cardiology, and primary care. Written by Robert King, Fierce Healthcare, June 11, 2020.
4. **Physician, hospital spending sinks to lowest point in more than 10 years**—The cancellation of elective procedures and low patient volume are the main culprits, while analysts anticipate a modest rebound. Written by Jeff Lagasse, Healthcare Finance News, June 16, 2020.
5. **U.S. commercial insurers' results face coronavirus claims uncertainty**—The pandemic has introduced considerable uncertainty for near-term underwriting performance that is expected to extend into 2021. Written by Fitch Wire, July 6, 2020.

MEDICAL PROFESSIONAL LIABILITY

Market Dynamics 2020

As part of our efforts to monitor ongoing market conditions, we have curated the following recent industry articles.

1. **Commercial markets continue to harden in Q2: USI**—"While it is too soon to determine the full impact of COVID-19 on the property and casualty insurance industry, it is apparent that the economic impact has started to manifest itself in the insurance market with decreased exposures, such as payroll, sales and inventory." Written by Matthew Lerner, Business Insurance, June 16, 2020.
2. **COVID-19 and malpractice: New risks to watch out for**—Limited PPE, viral spread, telehealth, and more rapid change brought about by the pandemic has drastically shifted the medical liability landscape—and the answers for how we will respond are still developing. Written by Chris Mazzolini, Medical Economics, June 23, 2020.
3. **US P/C challenged despite segment's overall improvement: A.M. Best**—A.M. Best says numerous factors specific to automobile, medical professional liability, and general liability lines continue to pose notable challenges to underwriters of those lines of coverage. Written by Charlie Wood, Reinsurance News, June 15, 2020.
4. **Insurance sector positioned to withstand COVID hit: Swiss Re**—"Overall, … we expect the industry to ride out what will likely be a short-lived recession, and for premium growth to bounce back as the economy enters more protracted recovery." Written by Matthew Lerner, Business Insurance, July 9, 2020.
5. **COVID-19 creates thicket of legal concerns for providers**—From decisions over what qualifies as elective surgery to navigating CMS updates and fears of doctors claiming unsafe working conditions, providers are grappling with a host of novel legal concerns. Written by Shannon Muchmore, Healthcare Dive, June 5, 2020.