Healthcare Liability Insurance:
Is Your Hospital Addressing Current and Emerging Challenges?
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Healthcare is dynamic by its very nature, but rarely has U.S. healthcare experienced change on the scale of the past two years—with:

- over nine million* additional people enrolled in insurance plans through the Affordable Care Act (as of late January 2015);
- an unprecedented number of hospital and medical group consolidations;
- urgent care centers, retail clinics, and other outpatient facilities proliferating;
- rapid adoption of electronic health records and an increasing number of healthcare data breaches; and
- a growing shortage of physicians.

How will these trends affect healthcare liability and what can hospitals do to prepare? You can help your organization meet the challenges of an evolving healthcare environment by clarifying what’s most important. You also must understand coverage options and the balance of risk and control. This two-pronged approach of knowing what’s most important and understanding risk/control options will help you ensure the right fit for your hospital’s needs.

What is Most Important to Your Organization?
To be effective, your healthcare liability insurance program must align with your hospital’s objectives, systems, and risk tolerance. This means your important control is respected—control over how the program is structured, how claims are handled, and strategies for containing costs.

You can help ensure program alignment with hospital objectives by considering:

- **Cost**—How can you utilize economies of scale, loss control strategies, and alternative options to reduce your hospital’s healthcare liability insurance premium? Can your insurance provider bundle coverages to lower costs and deliver a single-source solution (such as umbrella, D&O, E&O, cyber liability, etc.)?
- **Risk tolerance**—What level of risk is your organization willing to assume? Can your insurance provider structure a risk sharing program that addresses both budgetary constraints and your organization’s comfort level?
- **Control**—How can you help ensure your hospital retains important control over claims handling and key program parameters?
- **Mergers, acquisitions, growth**—What options are available to help make it easier to address coverage issues associated with consolidating new physicians and healthcare providers into your organization?
- **Loss control**—Does your hospital’s current approach address emerging healthcare liability risks? Would your risk management team benefit from added assistance and resources?

Many large healthcare organizations work with an insurance broker when deciding how to handle liability insurance. They then review how established insurance companies can offer expertise and
resources to meet their needs, along with:

- **Financial strength and ratings**—Does the company have a history of proven financial stability?
- **Experience insuring hospitals and large healthcare entities**—Does the insurer have extensive experience, with a track record of successfully serving this complex market?
- **Ability to provide alternative and customized insurance programs**—Traditional healthcare professional liability coverage may not meet the needs of many of today’s complex healthcare organizations. Large organizations may wish to retain risk and, potentially, share in good outcomes. Can the insurer provide alternatives tailored to your organization’s unique needs?
- **Level of transparency**—Does the insurer provide straight facts, respect your expertise and knowledge, and work to help you fully understand how your insurance program could be structured and what services are included?
- **Ease of doing business**—Is the insurer vigilant in anticipating and helping you solve problems? Do they make it as easy as possible for you to secure coverage and services to fit your organization’s criteria?
- **Claims defense**—Does the insurer commit to providing the level of claims handling you want for the level of risk you are willing to assume?

**Alternative Options**

Hospitals and large healthcare organizations increasingly seek more sophisticated and customized alternatives for managing and financing losses associated with risk. Options within alternative risk include numerous methods of retaining, transferring, or financing risk. Advantages of these options include a high level of control and the opportunity for cost savings.

Another alternative for organizations large enough to support necessary start-up costs (generally those with premiums of $1 million-plus) is a self-insurance program. These programs allow the hospital to directly assume the risk of claims. Various types of self-insurance are allowed under federal law, including:

- **Risk Retention Groups** (RRGs) are corporations or limited liability associations that are organized for, and whose primary activity consists of, assuming and spreading some or all of the liability exposure of its members. An RRG must be owned by its members or by an organization that is owned by members of the group. Members contribute capital, and membership is limited to individuals engaged in similar activities. RRGs are not subject to state regulatory requirements, and their members are not protected by their state’s guaranty fund should the group become insolvent.

- **Risk Purchasing Groups** (RPGs) are formed by a group of individuals or entities with similar or related liability risks to purchase liability insurance coverage on a group basis. This is not an insurance company. The RPG does not underwrite its risks, but instead purchases coverage for its members, usually from an established insurance company licensed in at least one state.

- **Captive Insurance Company**—captive insurers are alternative risk vehicles that allow organizations to form an insurance company subsidiary to finance retained losses in a formal structure. Common types of captives include single parent, association, group, agency, and rent-a-captives. Healthcare organizations can use a “cell” of an existing captive facility for much easier captive-option access. Captives are not licensed by individual states and many are formed “offshore” at locations where regulation is not as stringent. This entity does not qualify for protection under state guaranty funds and retains responsibility for all dollar losses accruing from claims.
Unique solutions that address the needs of growing and merging healthcare organizations also are in demand. Innovative insurers are providing flexible protection, consultation, and service options to create the optimal program for a hospital’s situation and preferences. For example:

- hospitals can purchase unique joint hospital/physician professional liability coverage; and
- hospitals can allow acquired physician practices to maintain their own insurance and seamlessly merge risk into the hospital’s insurance program through risk transfer or retention layers.

**Traditional Options**

Healthcare organizations that do not meet premium levels necessary for self-insurance or that find such arrangements outside their comfort zone may benefit from traditional options. Insurance companies that are experienced with hospitals and healthcare entities can work with you to craft a policy with the coverage you desire. For example, you may save money through deductibles, retrospective rating, or staff participation in specific risk reduction activities or training. You also can take advantage of the insurance company’s risk resources and expertise to augment your patient safety efforts.

**Expertise is Key**

Whether you take an alternative or traditional approach to mitigating risk, it’s vitally important you are clear about your healthcare organization’s needs and are comfortable with the company you choose. Working with insurance experts who have proven experience and success in healthcare liability insurance and risk options—along with selecting a stable and expert carrier—will net the best result.


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