Arthur J. Gallagher & Co.

Market Conditions

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Healthcare Management Liability

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The healthcare industry in the United States continued to see tremendous changes in the way it delivers care and the compensation received for the care provided in 2015. The turbulence created by the Affordable Care Act (ACA) continues and many providers are struggling to maintain profitability in the current reimbursement and regulatory environment. The challenges of the present environment have contributed to a continuation of the mergers and acquisitions trend that began several years ago. The claims frequency and severity within the industry can be directly tied back to the changes spawned by the ACA and those claims trends continue to be major concerns for all of the insurance carriers within the healthcare sector. The severity of employment practices claims brought by employed physicians continues to be a cause of concern, particularly in the more difficult employment jurisdictions such as California. Antitrust claims and anti-competition claims brought by competitors and regulators continue to be high severity matters within the sector, although several carriers have indicated that the frequency of these claims seems to have lessened. False Claims Acts were also cited as a concern by many carriers within the industry class.

As management liability underwriters evaluate healthcare risks in this challenging landscape, they are attempting to maintain relatively flat premium pricing on their renewals for good risks, while also pursuing new business opportunities, particularly small to mid-size risks. Meanwhile, healthcare organization claims continue to trend negatively for primary management liability lines. The continuation of mergers and acquisitions activity has prompted a pronounced negative impact to the profitability of those carriers. M&A transactions routinely result in increased antitrust and employment practices liability (EPL) claims.

In addition to the profitability impact being driven by claims, the ongoing M&A activity has reduced the number of potential new clients for underwriters. This, combined with the carriers' collective inability to obtain needed rate increases necessary to be profitable, will put pressure on underwriters to find favorable new business while trying to obtain meaningful premium increases on their own renewals. These underwriting pressures are shared by all of the primary carriers and many of the excess carriers within the sector. Limits capacity has been managed aggressively by carriers as some are unwilling to provide full policy limits for certain claims (antitrust, physician EPL claims, etc.).

Some of the healthcare exposures concerning D&O underwriters can be addressed by existing and newer policies in the market. Cyber liability has become virtually standard coverage for healthcare organizations of all sizes. Other insurance products such as regulatory billing E&O, managed care E&O, reputational risk coverage and wage & hour coverage are evolving to bridge the potential coverage gaps in a D&O policy form.

Overall, we expect 2016 to be a stable year for the healthcare management liability sector. Larger risks should anticipate rate increases in the mid-single digits, on average. Smaller risks will see very little, if any, change in their renewal pricing. Carriers may attempt to increase retentions for larger organizations, particularly on EPL. Some carriers will insist on sub-limits for antitrust claims and single plaintiff doctor EPL claims along with larger retentions for mass or class action EPL litigation. Broader professional liability and cyber or privacy exclusions are also on the rise. Organizations with recent claims may not have viable alternatives to their incumbent carrier as many underwriters are unwilling to write new business that has had recent claim activity. In addition, with the pending consolidation of Ace and Chubb expected to close in Q1 of 2016, insureds will have one less viable primary market. This merger will impact larger entities in particular, as the pool of primary carriers for larger risks will shrink considerably after this merger.

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