SENIOR CARE INSURANCE MARKET UPDATE

A Disorganized Market Cycle

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Overview

Leading up to 2020, the senior care professional liability insurance market was already hardening due to deteriorating loss trends and multiple carriers exiting the market. As COVID-19 struck this vulnerable population, the capacity in the market was heavily strained as pandemic exclusions and 50-100%+ rate increases became the standard of the limited carriers that continued to write business throughout the pandemic waves. This difficult trend continued through the end of 2021.

At the beginning of 2022, there were multiple new or returning entrants to the market, new Risk Retention Groups (RRG) formed, and Managing General Agent (MGA) programs established. With a flood of capacity, there was a strong, abrupt shift in pricing and terms as new entrants looked to gain market share. Occurrence policies began being offered; first dollar coverage and pricing under expiring terms suddenly returned.

As we enter 2023, we find a disorganized market. All at once, we continue to see small rate increases, while some accounts remain flat, and yet others achieve significant rate reductions. Below is a deeper analysis on the trends and contributing factors.

Rates Stabilizing...

The 100%+ rate environment observed over the last 24 months has ceased. The legacy carriers who were present through COVID-19 are generally still pushing 5-10% rate increases. However, there are many accounts that are achieving flat renewals and even significant 10%+ rate reductions, especially on accounts over $1 million in premium with sizable retentions.

It is important to note that rate increases still vary widely based on the type of facility, venue, claim activity and quality of the operator. Certain states such as New York (Grieving Families Act) and California (MICRA cap revised) have enacted legislation that will increase future loss severity as well as apply to pending suits.

Excess Capacity Competition

Some carriers will offer $10 million limits on excess layers, though $5 million per carrier is the average limit in an excess program. However, with many markets emerging, it has become easier to fill up a tower at competitive rates.

Retentions Shifting Higher

Small, single location facilities in favorable venues may still have first dollar coverage; however, larger deductibles and self-insured retentions up to $500k each occurrence are standard for the larger operators who wish to take on more risk and premium savings. Some markets can offer inner aggregate risk corridors to offset premium increases. The most sophisticated operators are establishing captive programs or rolling the Professional Liability (PL)/General Liability (GL) into their existing captive.

COVID-19 Claims Yet to Materialize into Existential Threat

There was concern that COVID-19 incidents and deaths would form a tidal wave of losses for professional liability insurers. Those fears have gone mostly unfounded. Nationally, only 1,000 COVID-19 specific suits have been filed against healthcare providers with 85% of those relating to senior care facilities. There is a united taskforce working to maintain defense under state-specific immunity statutes as well as using the Federal PREP Act as a backstop. The statute of limitations on COVID-19 suit filings requirement are beginning to run out and the industry will continue to keep an eye on both state and federal Supreme Court rulings.

Market Detail Quick Facts

- Primary GL/PL: $1M/$3M limits
- Excess: $1M to $10M limits over PL/GL, auto, employers' liability
- First Dollar to $500k SIR | COVID-19-Exclusion standard
- Rated on Licensed Beds and Type (Skilled, Assisted, Independent)
- 90% Claims made | 10% Occurrence

Facilities Staffing Concerns are #1

Underwriting discipline has tightened for several carriers as massive staffing shortages have crippled some operators. In certain cases, operators are unable to accept new residents as they cannot retain or hire enough nursing staff to safely handle the resident population. Due to burnout and pandemic-related conditions, many certified nursing assistants and registered nurses have left the senior care space entirely, leaving a huge talent gap.

Underwriters are taking a much harder look at staffing ratios and CMS survey results. There is also increased financial scrutiny of operators to identify credit risk when offering deductibles. Lastly, on-site risk management surveys have returned as a tool for pre-underwriting new and renewal business. Other trends are equally concerning:

- **Plaintiff Litigation Financing:** private equity firms have poured investments into funding medical treatment after injury, in the effort to maximize the potential bodily injury claim, contributing to so-called "nuclear" verdicts arising from ordinary cases.

- **Increased Use of Agency Staffing:** introducing temporary staff into the long-term care environment strains the quality of care because they do not know the policies, procedures, or the residents, as well as costing the operator 1.5 - 2x staff hourly rate.

Market Disruption Intensifies

All the disruption over the past 24 months has only sped up acquisition and divestiture activity. Large Real Estate Investment Trusts (REITs) are buying up small operators struggling to stay afloat. This liquid market for facility sales, in combination with full marketing efforts year-over-year, with increased competition, has put strain on senior care underwriters. This puts focus on the mid-sized $1-2 million premium accounts with retentions that are seen as more "profitable" opportunities for carriers.

Overall, the senior care market is in a transitional phase where terms can vary widely depending on the venue, size, claim history, expiring program, and broker's marketing efforts. The industry is faced with staffing shortages and occupancy rates that are struggling to recover to pre-pandemic levels. From a claim perspective, litigation funding and social inflation continue to heighten loss severity. Carrier partners can offer cash flow solutions, loss control resources, and multiple risk transfer options as important value-added services that insureds can utilize to navigate these challenges.

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