

BUSINESS INSURANCE

Primary care provider role exposes nurse practitioners to malpractice risks

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As nurse practitioners assume greater responsibility for providing primary care, they also are becoming more vulnerable to medical malpractice exposures.

The nationwide shortage of primary care physicians, coupled with changes in medical payment strategies spurred by federal health care reform, also is expected to hold nurse practitioners — who have the authority to diagnose, treat and prescribe medications — even more accountable for patient care.

Nurse practitioners' exposure to medical malpractice claims are following the same evolutionary path as that of primary care doctors, according to Carol Burkhart, a Chicago-based senior vice president with Oliver Wyman Clinical Solutions, a unit of Marsh & McLennan Cos. Inc.



“What nurse practitioners see in claims is what primary care physicians saw a decade and a half ago,” she said. “They were hardly ever sued, but as primary care doctors started to treat more extensively and refer less to specialists, you started to see more diagnostic and medication error claims.”

A five-year closed claims analysis conducted by Chicago-based CNA Insurance Co. on claims against nurse practitioners bears this out, with the most frequent allegations made against nurse practitioners involving failure to diagnose and delay in making a correct diagnosis, failure to provide proper treatment and care, and medication prescribing errors. The study also found the average paid indemnity has increased by 19% to \$221,852 in 2011 from \$186,282 in 2007.

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“What we're seeing now is that nurses ... are no longer tertiary care providers. They are now primary care providers, subject to the same exposures as primary care physicians,” said Michael Scott, assistant vice president for health care programs at CNA in Chicago.

Some professional liability insurance underwriters say if the trend continues, nurse practitioners could face higher professional liability insurance rates (see [related story](#)).

However, the potential for large medical malpractice claims against nurse practitioners could be mitigated by tight adherence to clinic guidelines.

“Nurse practitioners are very data- and evidence-driven,” said Tay Kopanos, director of health policy/state government affairs at the Austin, Texas-based American Academy of Nurse Practitioners. “We know the more data and information that we have can make care better.”

In fact, she said adhering to clinical protocols has helped to keep the frequency of medical malpractice claims down among nurse practitioners. According to the association, only 2% of nurse practitioners have been named as primary defendants in medical malpractice suits.

While nurse practitioners are sometimes covered by their employers' medical professional liability coverage, most buy their own insurance for several reasons, foremost of which is that med mal policies often require that nurse practitioners be scheduled, so they are not covered unless they are named in their employer's policy.

Since most malpractice cover is written on a claims-made basis, covering only those claims filed during the policy period, that prompts many nurse practitioners to buy their own occurrence-based coverage.

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“Medical malpractice is a pretty long-tailed liability exposure. It could be years before all the claims work through,” said Mark Brostowitz, a Chicago-based principal at Mercer Consumer, a unit of Mercer Health & Benefits Administration L.L.C. that administers Proliability, a program available to members of the nurse practitioner association that is underwritten by Liberty Mutual Underwriters, a unit of Liberty Mutual Holding Co. Inc.

“There have been situations where the employer has gone out of business and didn't purchase extended reporting period coverage, leaving the nurse practitioners uncovered. We had one claim last year where we had a couple of clients working for a community-based health care system that did not have coverage,” Mr. Brostowitz said.

In other cases, the limits of coverage available may not be adequate to extend to all of the practicing physicians as well as the nurse practitioners, said Bruce C. Whitmore, senior resource consultant in Willis North America Inc.'s national health care practice in Chicago.

“You could have a situation where the physician with \$1 million per occurrence, \$3 million aggregate has three claims in a year, leaving no coverage for the nurse practitioners,” Mr. Whitmore said. “Also, nurse practitioners may want their own legal representation,” which is available only if they purchase their own insurance, he said.
