



## **The Changing Environment for Medical Professional Liability**

*Change* is certainly the big “buzzword” right now in the Behavioral Healthcare industry. Given all of the dramatic changes affecting the field of behavioral health, you may not have given much thought to the rapidly changing landscape of medical professional liability.

The insurance market is cyclical and all signs are pointing to a shift in the cycle from what we call a “soft market”, with ample availability of insurance coverage at low prices and favorable policy wording, to a “hard market”, with limited availability of coverage, at higher prices and more restrictive terms and conditions.

### **TORT REFORM ROLLBACKS**

There are about 30 states that have some form of cap on non-economic damages (pain and suffering) that can be awarded in a medical malpractice lawsuit. These caps, and other tort reform measures, implemented by states to curb spiraling malpractice insurance costs, have come under attack in recent years by trial lawyers as “unconstitutional”. The erosion of tort reform laws will ultimately lead to greater frequency and severity of malpractice claims, and lead to higher insurance premiums.

### **INFORMATION TECHNOLOGY**

New technology, including electronic health records, telehealth, and smart phone apps, creates new exposures to claims and lawsuits. Will providers have time and resources to aggregate, coordinate, and be able to appropriately respond to all of this information? Additional claim legal expenses are anticipated to complete “e-discovery”, gathering multiple types of data and records stored on different servers and on a variety of electronic devices.

### **CHANGES IN SCIENCE AND MEDICINE**

Advances in neurotechnology and pharmacology are creating entirely new treatment protocols and new possibilities for misuse, misdiagnosis and clinical errors and omissions. New pharmaceuticals and expanded use of existing pharmaceuticals for “off label” uses, as well as new blood tests and brain scans, create long term exposures to claims and litigation where the potential extent of adverse outcomes or side effects may remain unknown for many years.

## **HEALTH CARE REFORM LAWS**

Treatment providers face a new wave of exposures as federal health reform implementation begins. These changes, including increased workloads and more significant roles in patient care, increase the likelihood of claims and put more health professionals at risk of being impacted by the actions of their peers. The addition of tens of millions of people with new access to health care will algorithmically increase the number of malpractice claims, while also creating an increase in claims from an overstressed system. The organizational transition to Accountable Care Organizations and Medical Homes, as well as new “national standards of care” are creating a high level of uncertainty that affects a provider’s risk profile and vulnerability to successful litigation.

## **INSURANCE MARKET CHANGES**

There is no doubt that “*change* is in the air”. Uncertainty about exposure changes are combining with several noteworthy developments and trends to signal a shift in the medical professional liability environment.

General trends include a more educated and informed population with greater expectations about the quality of their care. They are empowered to be involved in their care and speak up and question clinical practices and unsatisfactory outcomes. There is a perception held by claimants and juries that \$1,000,000 is a “standard” settlement value for medical malpractice claims. More claims are being filed as suits, by much more sophisticated attorneys. There has been an uptick in the frequency and size of claims for behavioral healthcare malpractice. The release of prior year claim reserves has masked what is actually a deteriorating profit picture for professional liability.

Now, more than ever, it is critically important to partner with an insurance program specifically designed for the behavioral healthcare industry. NSM Insurance Group’s ATP insurance program works with your chosen agent or broker to customize a comprehensive and cost-effective program to protect your reputation and assets in these changing times.

For more information contact us at 800-970-9778 or go to [www.addictiontreatmentproviders.com](http://www.addictiontreatmentproviders.com)