

**COVID-19
KEY CONSIDERATIONS
FOR MPL**

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Oliver Wyman has kept a pulse on the COVID-19 pandemic and understands that it has had a monumental impact on the healthcare system. While our consultants may not be directly on the frontlines, we hope that our intel will help companies understand how the virus and its effects have changed our world. Below you will find some key considerations around the impacts of COVID-19 on professional liability losses and ideas to help you be responsive to changes in experience to estimate your future retained liabilities for known and tail claims most accurately.

Key considerations in evaluating the impact of COVID-19 on medical professional liability claims – both directly related to COVID-19 infection and the strain it is putting on medical resources as well as the indirect impacts from economic and societal changes:

- **Federal Immunity for Healthcare Providers** The federal government is addressing potential liability issues through several measures.
 - The Coronavirus Aid, Relief, and Economic Security (CARES) Act is a new federal law which includes Good Samaritan language that provides additional federal liability protections for volunteer healthcare professionals during the COVID-19 emergency response.
 - The Public Readiness and Emergency Preparedness (PREP) Act provides broad immunity protections to those who manufacture, distribute, administer, use, or coordinate the provision of covered countermeasures. Covered countermeasures include antiviral, biologic, diagnostic, or other drugs; any other device; or any vaccine use to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of the virus or another mutation of the virus.
 - The Facilitating Innovation to Fight Coronavirus Act has been introduced, which would limit liability for healthcare providers providing treatment outside of their specialties, using or modifying a medical device for an unapproved use or indication, or seeing patients outside the premises of a standard healthcare facility related to COVID-19 for the duration of the national health emergency.
- **State Protections** States generally have legislation in place that could provide liability protections to healthcare professionals, particularly volunteers, who render care in an emergency. Additionally, many states have or are considering ways to extend liability protections for healthcare professionals.
- **Possible Frequency Increase in Some Allegations** Since it is unknown what standard of care will be applicable for healthcare services provided under pandemic conditions, establishment of valid claims is very uncertain. However, there is potential for a rise in certain allegations including:
 - Failure to diagnose, delay in diagnosis, etc.
 - Failure to provide a safe environment; failure to prevent exposure to other patients and residents
 - Delay in treatment due to supply chain shortages (equipment, medications, protective equipment)

- Negative outcomes due to inadequate staffing, over-utilization of staffing agencies, fast-track credentialing of providers to perform services that they are not formally or historically qualified to provide
- **Court Delays** While mediation and discovery are continuing, there will likely be significant court delays due to closures to support social distancing. We expect that payment patterns will lengthen as a result.
- **Plaintiff Bar Economics** Many plaintiff firms rely on regular settlement activity to fund operations. The economic downturn will also likely affect the financial position of claimants. As a result, we expect that plaintiffs and plaintiff attorneys will be more willing to expediently settle outstanding claims for reduced amounts.
- **Public Sentiment** The social environment is very favorable towards the healthcare providers during the pandemic. This may result in more sympathetic jury attitudes towards defendant healthcare providers. We expect that this may serve to temper severity values and reduce the likelihood of mega-verdicts in the near term.
- **Increased Utilization of Telemedicine** Many states are easing regulatory requirements for telehealth and the Office for Civil Rights at the Department of Health and Human Services has announced it will use enforcement discretion and not impose penalties for certain non-compliance with HIPAA rules in order to make treatment more accessible to patients while practicing social distancing. However, this rapid increase in telehealth may result in an increase in malpractice claims.
- **Delaying Elective Surgeries and Procedures** Suits related to surgeries that were delayed due to the pandemic will be difficult as a result of the standard of care likely being adapted for pandemic conditions. Providers will be judged according to prevailing circumstances and government issued emergency orders which are restricting non-emergency procedures.
- **Exposure changes** Health systems may see a decline in elective surgeries to conserve resources for the treatment of COVID-19 patients. As elective surgeries carry greater professional liability risk than COVID-19 treatment, we expect that professional liability exposure of most providers will be lower during the pandemic treatment period.

Please let us know how we can help you in any way during this time with analysis or even to be a sounding board. I'm also linking here to our [Coronavirus Hub](#) that you might find helpful. (Link to the [Healthcare Response](#).)