

National Underwriter

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E&S/SPECIALTY MARKET UPDATE: PROGRAM BUSINESS

■ SUCCESS STORY

NAS' Doctors' Defense Program Evolves

BY SUSANNE SCLAFANE

NOT EVERY NEW INSURANCE IDEA is a roaring success out of the gate, but a change in delivery model helped jumpstart the success of one of NAS Insurance Services many specialty programs, the firm's leader reports.

Richard Robin, chief executive officer of NAS Insurance Services, described the evolution of MEDEFENSE, a policy covering physicians and health care entities for defense costs and fines and penalties resulting from various types of regulatory investigations, including probes of Medicare and Medicaid billing errors and fraud allegations.

Mr. Robin explained that the concept was developed in the 1980s, when some physician groups and associations approached the Encino, Calif.-based managing general underwriter to develop a product to cover defense costs associated with peer reviews, hospital credentialing and state board proceedings.

The MGU responded by developing a low-limits policy covering a broad scope of physicians' disciplinary proceedings and hiring a retailer to go out into the open market to sell individual policies.

"That wasn't very successful. The premiums were low and the exposure wasn't that much of a feared exposure," he said.

Two factors changed to drive sales in the 1990s, he said.

First, there was an initiative launched in Washington under President Bill Clinton's administration to recoup funds from the Medicare/Medicaid system. That generated a lot of press "about 400 FBI

PROGRAM HIGHLIGHTS

What Is MEDEFENSE?

NAS' MEDEFENSE product provides coverage for defense costs as well as fines and penalties resulting from disciplinary proceedings and regulatory investigations.

Common covered exposures include:

- ▶ Billing (including fraud and abuse allegations)
- ▶ Medical Board reviews
- ▶ Staff privileges
- ▶ HIPAA
- ▶ EMTALA
- ▶ Stark law

The cover trigger is written notice of a regulatory proceeding.

Costs can be under \$200 per insured for carriers with a few thousand insureds. NAS can work to keep costs low through limit adjustments.

"Our product is meant to complement the insurer's core business, and if it puts a dislocation in pricing, that's not helpful," said CEO Richard Robin. "The physician insureds of these carriers need to get the impression that they're receiving this coverage essentially for free—paid for out of their profitability."

agents going out specifically to knock on physician and medical group doors to audit and to find upcodings or miscodings," he recalled.

In fact, by 1999, *NU* was among the publications reporting on the rising exposures for health care providers—the potential for damages and fines under the federal False Claims Act, like treble damages for amounts overcharged and additional fines for every false claim.

Special provisions of the laws in place at the time included the "qui tam" provision of the False Claims Act, Mr. Robin recalled, noting that this was a whistleblower provision entitling individual citizens who reported fraud and abuse by health care providers to actually participate in receiving some of the recouped funds.

In addition to the increased perception of risk, Mr. Robin said a new

delivery model suggested by an underwriter at Lloyd's changed the sales dynamic for MEDEFENSE. (NAS issues policies on behalf of syndicates at Lloyd's).

The Lloyd's underwriter, which was doing a substantial amount of treaty reinsurance business for physicians malpractice mutuals in the United States, suggested NAS hook up with reinsurance intermediaries to be introduced to their clients—executives of physicians malpractice carriers.

"We came up with a new model, which was basically adding a low-limit [MEDEFENSE] benefit" to the physicians malpractice policy for all insurers or members of a mutual.

In essence, the MEDEFENSE piece is reinsured to Lloyd's, he explained, noting that the add-ons can be sold in this way to RRGs and physicians' associations also.



“Generally, with this model, we try to get the whole spread of business, and in return we waive underwriting. It’s administratively efficient. It’s like getting a benefit on your credit card,” he said.

Mr. Robin said that “at this point, MEDEFENSE is really a benchmark. Just about every physicians’ med mal policy out there [has regulatory defense cost coverage] in some way shape or form, whether or not we continue to participate.”

Mr. Robin noted that over the years NAS has found new ways to exploit the distribution model with physician insurers, such as offering additional policy add-ons and higher limits.

One increasingly popular add-on is e-MD, a cyber liability privacy policy created in response to the emergence

of HIPAA laws put in place in the 1990s addressing the privacy and security of electronic medical records. “This year, all the med mal carriers are waking up to new red-flags rules,” he said, referring to Federal Trade Commission rules requiring procedures to detect and mitigate identity theft.

There’s also been increased demand for MEDEFENSE itself, driven by the emergence of contractors known as RAC auditors, he said—referring to Recovery Audit Contractors hired by the federal government to pursue large Medicare and Medicaid overpayments. “They’re sort of bounty hunter contractors that are going out to medical offices trying to find issues,” he said, noting that MEDEFENSE’s broad coverage for regulatory investigations captures RAC audits.

MEDEFENSE has “always been treated like an accordion, so there’s a list of perils that we’re happy to put in,” he said, listing Stark and EMTALA proceedings—the former relating to anti-kickback laws and the latter to emergency medical treatment laws.

“Those weren’t that big a deal 10 years ago, but they are now. So we have it standard in MEDEFENSE policies [today],” he added.

“We’ve had policies that have included representation when an insured has a federal tax audit,” he said, highlighting the flexibility with which the policies can be written. “We’ve had per-diem benefits, where a physician has to sit in front of a state board for some hearing, and they would have some daily benefit that pays them for their time.” ■■