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INSURANCE MARKET UPDATE FOR NONPROFITS

SPRING 2024

There are two contextual rightsizing references required to fully appreciate this update.

1. Our Gallagher overall US market report, which features in 15 pages the broader, blended marketplace and benchmarking data to verify trends overall across all lines of coverage and all geographies of the US: It's a report that may be considered more optimistic than what our nonprofit specialists are experiencing. But it is important to have the broader perspective, as we are in a world that is so interconnected that we can't isolate nor simply rest with one macro view. This detailed report points to some relief messaging, some capacity, some easing of pricing, and turning the corner — and we value this broader perspective.

2. The nonprofit sector we serve, which is very diverse and complicated by types of exposures and classes of business, jurisdictional considerations, and legacy issues, as well as the heavy weight of public perceptions: Nonprofits are held to a higher standard of care. In terms of the P&C insurance market, we are less optimistic overall; in fact, we continue to be in deteriorating, unchartered waters in so many ways for many nonprofits. Carriers are leaving classes of business and parts of the country, and are laying off staff. Reinsurers are reducing umbrella limits and abuse coverages/limits/terms (occurrence vs. claims made). Carriers are in rating review or being downgraded. Nonprofits are even exiting certain vital human services markets due to unavailability and/or unaffordability of insurance premiums, leaving significant gaps in our social safety net.

The first point speaks for itself; you can read that report separately. The second one needs some intentional study and unpacking to get sector leaders to a point of resourcefulness and hope, as that is what we need to confront the headwinds nonprofits are facing and sustain their impact in communities all over the world. Thus some commentary on the why and how follows.

WHY

Some of these threats and stressed market conditions have led to various pursuits to change the laws of insurance (for example, the Nonprofit Property Protection Act, geared to allowing nonprofit risk retention groups to write limited property). Nonprofits typically buy a package (liability and property), not just liability. Congress is considering this NPPA, which would be the first adjustment since the Risk Retention Act was created in 1987 to combat the stressed liability, abuse, and malpractice market conditions then. Our Gallagher Nonprofit practice leadership has devoted hours to collaborating and seeking letters of support from nonprofits facing dire situations relative to insurance renewals and options.

We are also aware of other initiatives in some states, particularly California, to pass laws that assure nonprofits that are substantially compliant with all the requirements (for example, certification of foster family homes) will not be held liable for random criminal acts that they could not have anticipated.

Why do we continue to be in this overall negative outlook? There are several contributing factors that are especially affecting the nonprofit sector and those agencies serving youth and vulnerable adults.

- **Rollback of tort reform:** States are opening up the statute of limitations for reporting abuse. Reporting by alleged survivors of older claims of abuse has led to a cascading of nonprofit bankruptcies due to the inability to fund mass survivors. There's also been a rollback of previously limited punitive damages. For the most part, carriers are still offering occurrence coverages, so they may have dozens of years of potential liability that they must fund.
- **Social inflation:** Public perception of nonprofits' handling of these abuse claims is very negative, leading to nuclear verdicts coming from old abuse claims (occurrence coverage).
- **Increase in plaintiff attorney activity:** The onslaught of reporting and headlines has led to plaintiff attorneys looking for survivors of abuse, especially from organizations that have substantial limits of coverage and any kind of proof of negligence. By using data, analytics, and marketing, they secure more claimants.
- **Changing jury view of fairness and duty of care:** We now have exogenous forces that are affecting these loss trends, such as millennials on juries and litigation financing, which are also increasing factors in terms of prolonging the life and cost of claims. In addition, juries seem to be unwilling or unable to bifurcate their rage at instances of abuse that were covered up for decades from random criminal acts that a nonprofit could not have anticipated based on conducting all the reviews and background checks required to determine if an individual is likely to abuse.

HOW

How are the Gallagher teams across the country collaborating with our nonprofit clients and programs?

- **Data:** We are focused on building the best data profile, especially focused on property appraisals and, depending on the location, secondary and tertiary levels of information — data is king. We are clearly defining the operational exposures and creating profiles that become more reliable than website cruising by underwriters. And to the point of experiencing losses, what are our remediation efforts on a frequency and severity level of these claims.
- **Continuing the same strategy and expecting different results is the definition of insanity:** This is not just about repeating past years' insurance carriers, structures, terms, and limits. We must examine every aspect of the insurance program, mindful that umbrella limits are more expensive, if they are even available. More benchmarking and analytical work needs to be done to get to appropriate limits. Youth-serving organizations are advised to reexamine the abuse insurance, terms, and limits. We must balance the perspective of protecting our future with avoiding the potential of high liability limits serving as targets. Do these multimillion-dollar verdicts really "teach them a lesson," or do they drain precious resources that could be used to protect other children? Those in challenging cat-prone areas (now expanded to severe convective storms, wildfire, wind, and hail) must not only work closely on better data (insurance-to-value analysis) but consider larger deductibles and government complementary programs such as FEMA and NFIP as sources of support.
- **Excellence:** We are working to get our nonprofits focused on operational excellence (having a safety committee, for example) and making the risk management program a priority — perhaps board driven. Start with firming up and strengthening your safety committee. Insurance should always be secondary to risk management. Can our nonprofits get to a point of confidence to take greater deductibles? Building a culture of safety is a great start to reducing the total cost of risk and dependency on insurance per se. Can we create a story here that is compelling to underwriters and differentiates the risk?
- **Start early with focus on market options:** We have a remarkable portfolio of carriers, both admitted and excess and surplus lines, and in many cases we represent their largest broker. We value longevity and market partner forging, but in this unpredictable marketplace, we believe we have to start earlier and cast the net wide. There are carriers that see new business differently from renewing business, which seems counterintuitive. Be careful in budgeting the total cost of risk projections in your planning, as premiums are a factor of rate (trending upward for the most part on most lines) and experience, and many carriers continue to look for rate increases.
- **Building and growing programs:** Gallagher's history as a program broker is proven and long-standing. In most cases, these programs have become empowering, equity-building profit centers, where the nonprofits have control of incidents/claims and may reduce the total cost of risk long term. There is power in aggregation, retaining expected losses, spread of risk, and even alternative risk financing. Working with more than 30,000 nonprofits, we see potential both now and in the future to create new programs for our insureds and grow the programs we already have. Find ways to come together and collaborate, and you will experience resilience and new paths to solution building.

"Risk" is a very common word these days, used to add color and challenge to our life and work situations, but today we know that risk has positive as well as negative connotations. Focused on our work, we manage risk, in our organizations and with our staff and volunteers, both treating (mitigating) or avoiding negative outcomes and embracing opportunities (growth, impact). The discipline of enterprise risk management has brought science and scenario building into our assessments strategically and operationally. We need to embrace these tools (RiskMap) and partners who provide them, and continue on our path of excellence and duty of care in all we do.

Society needs nonprofits, given their vital role in helping people and solving problems. Let's not fear risk but make sure we are proactive in all we do. We can't totally avoid negative events, or even fortuitous surprises, but we can certainly be better prepared, always.Insurance helps, we know, and that will always be the case.

Please contact nonprofitpractice@ajg.com to learn more.

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