Gallagher

Insurance | Risk Management | Consulting

Spring 2024
Healthcare Market Update

Loss severity will dictate the terms offered to many healthcare systems and hospitals for the coming years. The insurers serving this market segment will be required to adopt a more disciplined and stringent underwriting approach in order to sustain themselves in this environment. Many will consider reduced limit capacity, rate increases and pressure on clients retention levels and aggregate features.

For the most part, the plaintiff bar has become unreasonable, mostly seeking record verdicts with less regard to the parties they serve. As such, our healthcare clients will need to engage more disciplined defense strategies in order to defend their standard of care as well as potential reputational harm associated with this environment of increased loss severity.

Hospital Professional Liability Insurance

Many insurers have set new minimum guidelines focused on achieving profitability, even if it means reducing their current books of business. The underlying goal is sustainability. Therefore, many healthcare systems can expect pressure on deductible or self-insured retention levels. Those with large excess towers will see their excess carriers manage capacity limits and likely reduce their participation.

The insurers dedicated to this segment remain highly concerned about deteriorating loss ratios, and that concern appears to be justified. According to a recent market update by TransRe, this market segment experienced at least one verdict in excess of $10 million each week in 2022 and a verdict in excess of $25 million every other week during the calendar year. They also suggest that underwriting results for 2023 will be in a less favorable position than 2022.*

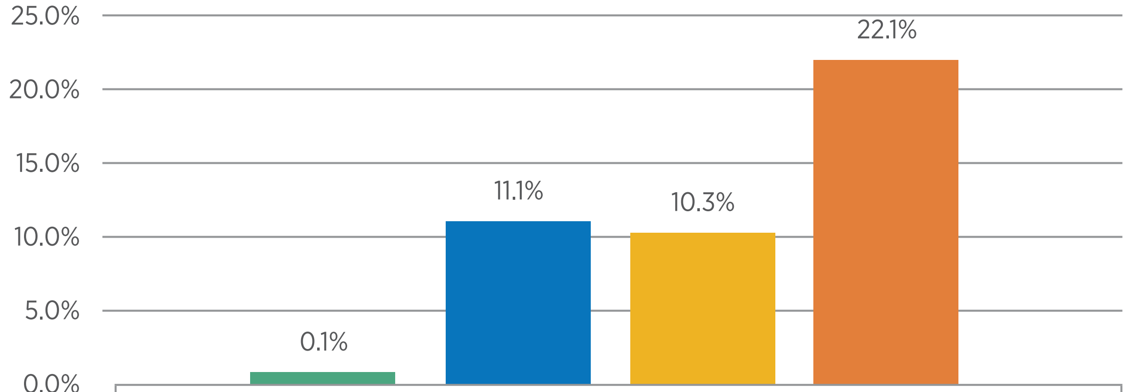
This loss severity is driven not only by the increasing complexity of healthcare procedures and care but also by catastrophic outcomes resulting from medical errors, such as long-term disabilities or loss of life, that lead to such substantial financial settlements or judgments. Birth injuries and obstetrics-related losses still make up the largest individual claims, and allegations of sexual misconduct have increased at an alarming rate.

The growing trend of larger compensatory awards and the expanding scope of noneconomic damages further contribute to heightened loss severity. Insurers have to try to accurately assess and price for this severity risk, which is compounded by the impact of ever-evolving legal precedents and court decisions on settlements.

Hospitals can expect insurers to continue to seek premiums for exposure growth and other market conditions, such as loss development and venue. We remain optimistic that the market may become more stable over the next few years, but perhaps only if we see some reductions with the current levels of loss severity.

Loss severity in medical malpractice claims affects hospital professional liability insurance and the insurance carriers providing coverage. The outcomes will have a material effect on a health systems premiums for many years, regardless if the claim closes. Managing loss severity is crucial for both hospitals and insurance carriers to ensure the availability and sustainability of professional liability coverage.

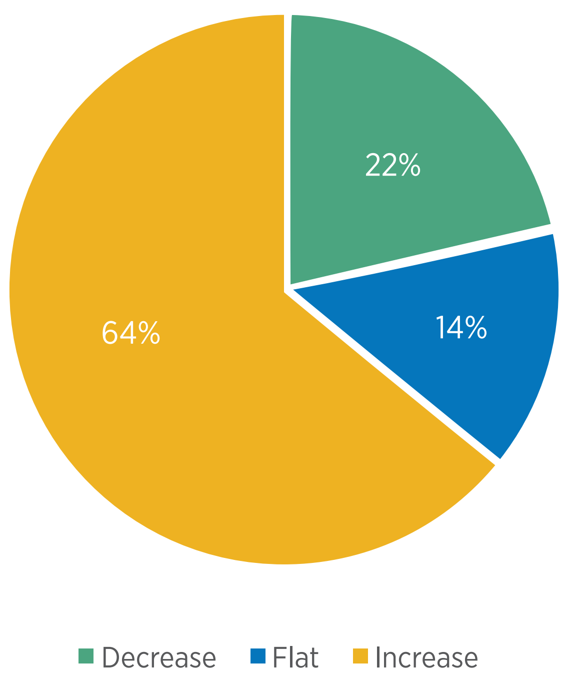
Hospital Professional Renewal Premium Trend



	2024 Q1
25th% Renewal Premium	0.1%
Medium Renewal Premium	11.1%
Average Renewal Premium	10.3%
75th% Renewal Premium	22.1%

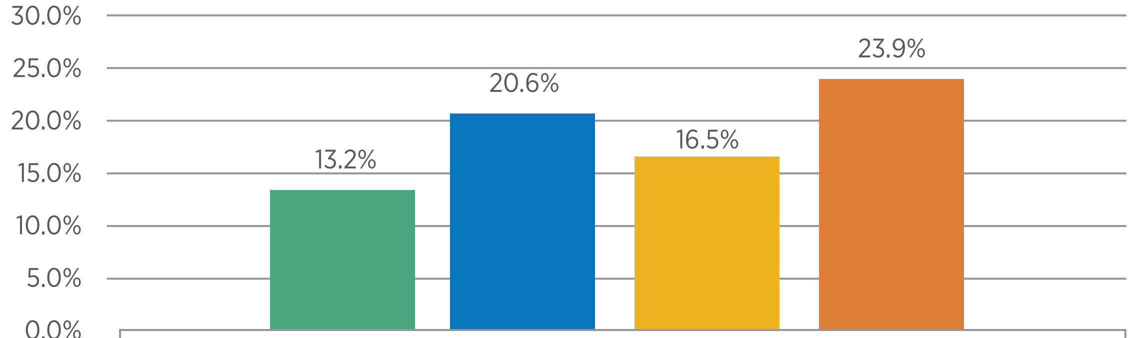
Source: Gallagher Drive

Hospital Professional Renewal Premium Change Distribution



Source: Gallagher Drive

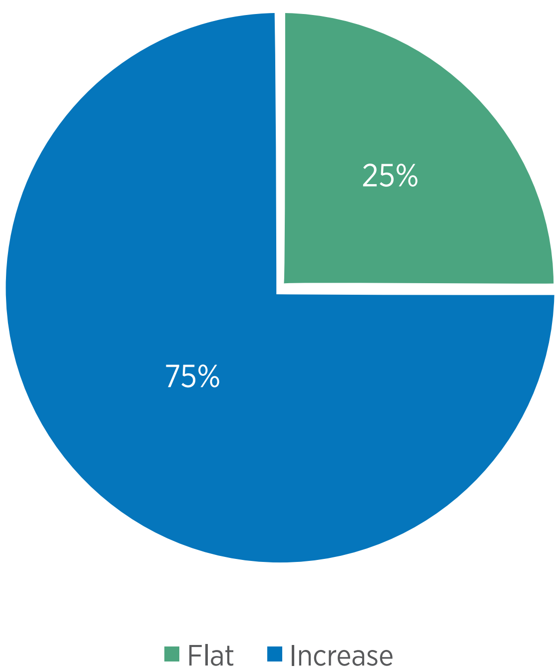
Umbrella Rate Trend



	2024 Q1
25th% Rate Change	13.2%
Medium Rate Change	20.6%
Average Rate Change	16.5%
75th% Rate Change	23.9%

Source: Gallagher Drive

Umbrella Rate Change Distribution



Source: Gallagher Drive

Digital Health and Telemedicine

Virtual health programs that include medical professional liability insurance, technology Errors & Omissions (E&O) insurance, and cyber liability insurance have remained stable. The overall results in the digital health and telemedicine sector have been extremely favorable, due limited attention by plaintiffs' counsel thus far. Carriers are reporting an increase in claim volume including in behavioral health.

Rate pricing has continued to be relatively flat in terms of rate year-over-year, with some rate decreases on established accounts with some history. We've seen tremendous growth in many accounts with increasing revenues, and pricing is tied to revenue, thus proportionate. Larger accounts with a strong loss history and proper loss controls have actually seen rates decrease by as much as 25%, which has helped partially offset exposure increases due to year-over-year revenue increases.

Historically, we've had limited carriers focused on this unique niche. In the summer of 2023, several additional carriers launched products to compete in this industry sector with new virtual health programs. Gallagher has been focused on product development with new market entrants given our experience in the telemedicine space. These new entrants are beginning to impact pricing as they aggressively look to add premium in a finite market. We expect this trend to continue through 2024, which should lead to additional rate decreases.

Capacity is still limited to $5 million for virtual health programs, with some markets being extremely cautious about offering terms above $1 million per claim/$3 million in annual aggregate for medical professional liability. However, the new capacity in the market makes it relatively easy to build a limit tower to meet client demands.

Executive and Financial Risk Insurance

The executive and financial risk insurance market for health systems and large physician groups remains quite stable. While some carriers have reduced their exposure to some types of healthcare risks, such as very large organizations and private equity-backed for-profit healthcare, the market still has ample capacity to fill out even the largest Directors & Officers (D&O)/employment practices liability (EPL) towers. On average, premium rate levels have continued to be very steady, with some minor premium increases for very large organizations and some modest premium relief for smaller organizations.

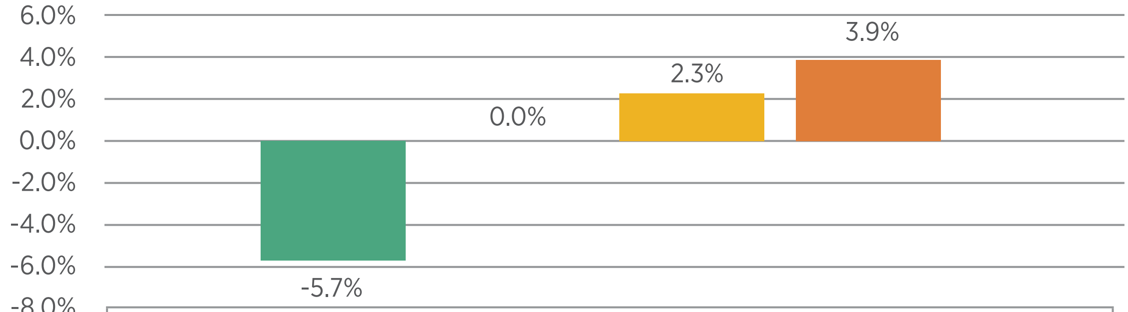
Private equity-backed for-profit organizations continue to be a major concern for some of the primary healthcare D&O/EPL carriers. Insurers will continue to put upward pressure on retention levels due to an anticipated increase in both D&O and EPL claim frequency in the next year, in part due to the increase in defense costs for these claims. The fast pace of mergers and acquisitions (M&A) in system and physician groups continued in 2023, and there doesn't appear to be any end in sight to the M&A activity within the healthcare sector. We expect M&A activity to continue to be high in 2024.

Regulatory activity is very high and qui tam claims continue to be a problem within the healthcare sector, particularly for health systems. Antitrust claims, typically brought after the announcement of M&As, continue to be the most severe D&O claims for insurers. The federal regulatory agencies are paying particular attention to larger healthcare mergers in hopes of prohibiting mergers they believe to not be in the interest of healthcare service buyers. Employment practice claims are also on the rise, specifically high wage earner and medical practitioner claims, although not at an alarming rate.

The 2024 executive and financial risk insurance market for healthcare organizations will be somewhat stable, but carriers will try to limit coverage for certain exposures, such as antitrust and regulatory matters. Insurers will attempt to increase retentions for medical practitioner, high wage earner, and class action claims on a case-by-case basis. Some primary carriers will attempt to better manage limits by cutting them in some cases, which isn't a cause for concern because the excess market has ample capacity and can be quite competitive. Any upward pressure on premiums can likely be offset by a move to higher retentions.

As always, start early and engage with your underwriters well in advance of your renewal.

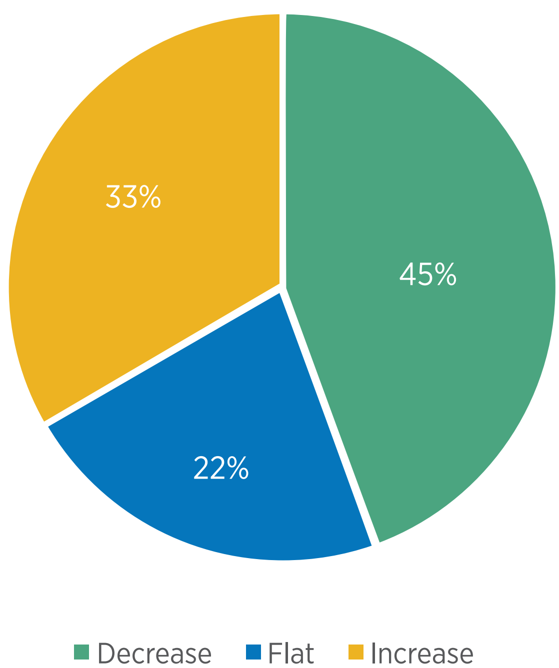
D&O Private Rate Trend



	2024 Q1
25th% Rate Change	-5.7%
Medium Rate Change	0.0%
Average Rate Change	2.3%
75th% Rate Change	3.9%

Source: Gallagher Drive

D&O Private Rate Change Distribution



Source: Gallagher Drive

Cyber Insurance

The cyber insurance market for hospitals, health systems, and medical groups has remained competitive into 2024, even in the immediate period (as this is written) following a cybersecurity incident in late February, at a clearing house/business associate organization, that is still disrupting healthcare and billing information systems nationwide. The two main cyber insurers for hospitals and health systems have begun pressing for rate increases, however.

That incident caused disruption to operations at many covered entities, with consequent business income loss and extra expense being incurred, and further may have breach notification implications for healthcare providers under the Health Insurance Portability and Accountability Act (HIPAA). At the time of writing, the organization is still investigating the incident and whether there was unauthorized access to or acquisition of protected health and other sensitive information. In addition, the Office for Civil Rights (OCR) is investigating the incident.

Ransomware has remained at the forefront of headlines and losses, with several health systems suffering substantial costs and business interruptions because of such attacks. By many accounts, ransomware activity is picking up again, although at the same time, improved controls and backups are enabling more insureds to refuse to pay the extortion demand, and instead rely on their own resources to restore their systems.

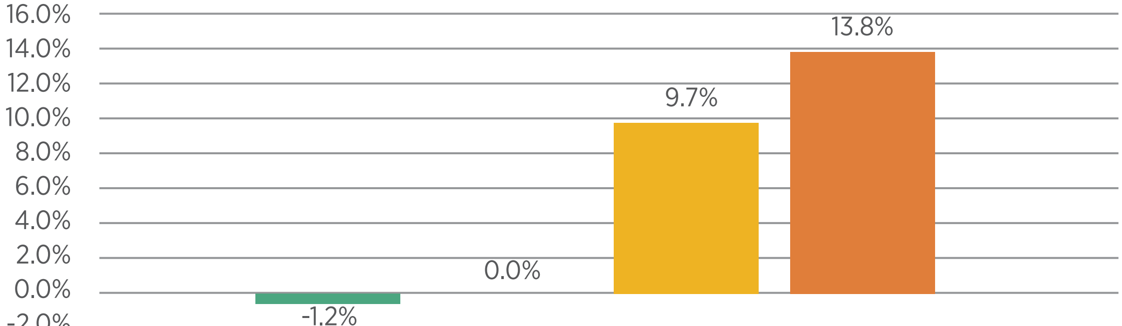
Insurers have continuing concerns about the aggregation of risk (i.e., single incidents affecting multiple insureds), whether due to a nation-state cyber war, infrastructure failure, incidents at vendors, or vulnerabilities in operating systems. The incident referred to above, has highlighted the interconnected nature of healthcare services as well as common reliance on particular vendors and it will be interesting to see how the key insurers of healthcare cyber risks will respond to the many notices of claim/loss that they have received as a result of this incident. Certainly, it will take some considerable time for the scale of income loss, notification costs, and third party claims to play out.

Insurers would rather not underwrite these (possibly) aggregating risks that do not have a clear loss record, aren't easily measured, and continue to evolve. Further, insurers generally assert that they are not collecting sufficient premium to cover them. Many insurers have introduced specific exclusions or restrictions in coverage, perhaps most forcibly by Lloyd's of London, which now requires its market to apply specific exclusions for war and state-backed cyber attacks.

Many hospitals have been the target of litigation alleging improper use of pixels and other tracking technology in their marketing websites, as well as in patient portals that enable the unauthorized transmission and disclosure of patients' personally identifiable information and protected health information to third parties. Some large settlements have been made, and defense costs before getting to trial can be in the millions of dollars.

Looking forward, it remains fundamental that healthcare organizations continue to implement and maintain at least the minimum controls that cyber insurers require. Insureds should continue to improve their defenses, and make sure that insurers understand the steps and investments the insureds are making. This information will support the negotiation of the best possible renewal terms with insurers. Insureds without good controls or with claims/losses will face continuing difficulties in the market, and need to explain the steps they have taken to prevent repeat incidents.

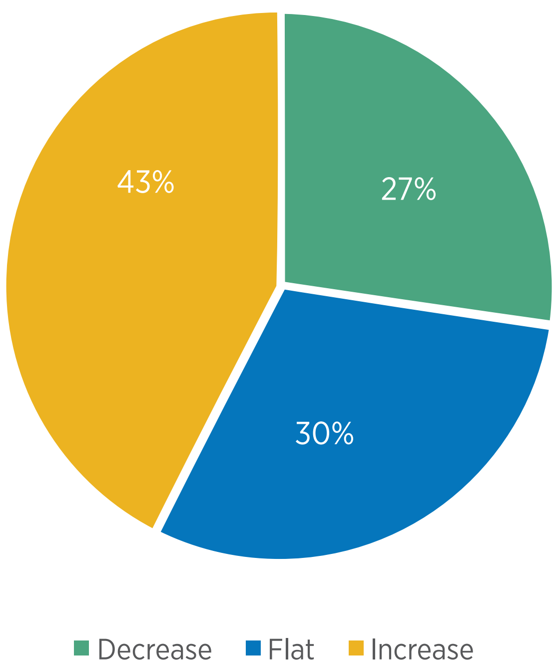
Cyber Rate Trend



	2024 Q1
25th% Rate Change	-1.2%
Medium Rate Change	0.0%
Average Rate Change	9.7%
75th% Rate Change	13.8%

Source: Gallagher Drive

Cyber Rate Change Distribution



Source: Gallagher Drive

About Our Data

Gallagher Drive® is our proprietary data and analytics platform that combines market condition, claim history, and industry benchmark information to give our clients and carriers the real-time data they need to optimize risk management programs. Utilizing this tool, our Brokerage team can provide specific rate guidance for your line of coverage, industry, and geography.

When used as part of **CORE**360®, our unique comprehensive approach to evaluating our clients' risk management programs, Gallagher Drive creates meaningful insights to help clients make more informed risk management decisions, find efficient use of capital, and identify the top markets with the best solutions for their risks.

Because of the highly nuanced nature of this market, it is imperative that you work with an insurance broker who specializes in the healthcare industry. Gallagher has a vast network of specialists that understand your industry and business, along with the best solutions in the marketplace for your specific challenges.

Sources:

[1] https://www.theinsurer.com/reinsurancemonth/rising-verdict-severity-ripples-through-casualty-lines/

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