

Miscellaneous Healthcare Spotlight

Shedding Light on Correctional Healthcare Risks

by Evan Smith

For those in the business of insuring healthcare professional services, correctional healthcare represents a vast market. All of the approximately 2.3 million¹ adults housed in local jails and state and federal prisons across the United States have a constitutional right to healthcare services, courtesy of a landmark Supreme Court decision in 1976.²

The healthcare services required in the correctional setting are virtually limitless. They range from basic physicals upon admission to a facility, to long term care for acute or chronic conditions, such as heart conditions, diabetes, or human immunodeficiency virus (HIV). There is regular dispensing of medicine, treatment of mental health and behavioral issues, and gynecological/obstetric care. Healthcare services must be provided to individuals during short tenures in local, county, or municipal jails, and to inmates spending their remaining lifetime in federal prisons.

This broad spectrum of services are delivered through an array of healthcare providers, including local community doctors and nurses, medical groups, government organizations, public and private staffing agencies, and outsourcing businesses. About one third of the healthcare services provided to incarcerated individuals countrywide are delivered through medical students and universities nationwide.

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Widespread Opportunity, High Risk

Medical care in the correctional setting poses unique challenges for healthcare providers and medical professional liability insurers alike. The population within America's jails and prisons tends to have a high prevalence of communicable diseases, such as human immunodeficiency virus (HIV), tuberculosis, methicillin resistant staphylococcus aureus (MRSA), hepatitis B virus infection and gonorrhea. The patient/inmate population has a higher than average incidence of serious drug and alcohol abuse and mental health issues. By and large, these individuals lacked regular preventive medical care before entering the prison system. The incarcerated are, generally speaking, a noncompliant patient population. They also tend to be especially litigious.

Experience has shown that inmates are eager to sue healthcare providers at any whiff of insufficient care. Many claim, in conjunction with medical malpractice allegations, that their constitutional rights (section 1983) have been violated.

Claims frequency is high, since frivolous and pro se (unrepresented) lawsuits abound, and courts are careful to give prisoners due process. The following situations have given rise to some severe claims:

- ✓ A married father of three is arrested for DWI following an auto accident and brought to a holding cell. Despite healthcare monitoring in the cell, he suffers a subdural hematoma from hitting his head on the steering wheel during the accident, and slips into a permanent vegetative state.
- ✓ After being caught shoplifting, a former marine slams his head so hard against the wall he cracks his skull. While in the infirmary, he hangs himself in the bathroom.
- ✓ An inmate who complains of stomachaches so often his complaints are dismissed turns out to have pancreatitis, develops an infection and dies.
- ✓ A young man arrested under questionable circumstances dies in his holding cell after being tasered by police.

¹ Bureau of Justice Statistics, 2008

² Estelle v Gamble

Carving a Profitable Niche

Many insurance markets and brokers shy away from correctional healthcare risks -- bypassing an avenue for potential growth. Correctional healthcare is a specialized niche, separate from the overall correctional market. Like other high risk areas, several factors can distinguish one correctional healthcare risk from the next and allow these exposures to be underwritten profitably over the long term. These distinguishing factors include:

- ✓ **The quality of the healthcare providers.** As in the general population of medical professionals, quality varies widely, but many of those working in the correctional setting are highly experienced and well credentialed.
- ✓ **Services rendered.** A correctional healthcare provider may provide a diverse array of healthcare services, however, acute care services should be provided by a separate facility designed for this purpose that is in close proximity to the correctional facility.
- ✓ **Initial screening protocols.** The first 72-hours after admission to a jail is the most unstable time for the incarcerated individual and the highest risk period from the standpoint of medical professional liability exposure. Patient history is unknown and patients are under stress. They may be under the influence of controlled substances or alcohol. Consequently, healthcare providers should have sound protocols for triaging and screening these individuals. (For example, do standard procedures call for immediate EKGs on every patient entering jail who has been tasered by police?)
- ✓ **Patient loads/presentations.** It's a common misconception that large federal penitentiaries are always the "worst" risks. By the time an inmate has reached that point in the system, they have had months or years of medical evaluations and been stabilized in the system. Smaller jail facilities, with shorter stays and more frequent turnovers, can actually present a greater risk for medical professionals. To factor in this higher turnover, rating of correctional healthcare risks typically considers not simply the number of prison beds but the number of presentations per bed.
- ✓ **Provider fee arrangements.** Capitated fee arrangements can leave medical professional more vulnerable.
- ✓ **Technology.** Electronic Health Records (EHR) and Computerized Physician Order Entry (CPOE) are making their ways into correctional healthcare.

How Insurance Can Help

As a leading provider of healthcare professional liability insurance, Beazley keeps close watch on the risks of diverse healthcare providers, including those providing medical care in the correctional setting. Because we understand these risks, we can work confidently with our brokers to write them successfully over the long term. Our healthcare professional liability coverage for correctional healthcare risks offers expansive protection that can include:

- ✓ An array of scheduled professional services, from basic physicals, substance abuse treatment, and behavioral therapies, to prenatal care and dental services.
- ✓ A broad definition of "medical professional"
- ✓ Possible punitive damages coverage
- ✓ Coverage for claims of violations of constitutional rights (Section 1983) made in conjunction with healthcare liability claims
- ✓ A carved back "reasonable use of force" exclusion.
- ✓ SIRs with credible claims handling experience, or duty to defend (on low frequency accounts)

Beazley also has an Intelligence Network which conducts ongoing research and analyses to keep our underwriters, brokers and customers ahead of dynamic healthcare professional liability risks. This network is central to Beazley's ability to create insurance contracts that work in the most challenging market niches -- and expand opportunities for our business and our brokers.

To learn more about Beazley's solutions for Miscellaneous Healthcare Professional Liability Risks, contact Evan Smith at evan.smith@beazley.com.

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