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Wholesale & Specialty

Long-Term View Important for Senior Living Marketplace

During the COVID pandemic and the immediate aftermath, many accounts, including high-quality accounts, were painted with a broad brush due to lingering concerns about liability and staffing shortages. Those concerns led to tighter underwriting requirements and significant price hikes across the marketplace in 2020 and 2021. However, the senior living market began to calm in 2022. In 2023, the marketplace continues to show signs of stability. While price increases are still occurring, the rate of increase is slowing for some. New carriers have also entered the marketplace and are offering aggressively priced products that are attractive alternatives for those seeking to cut costs.

By 2034, it is predicted that 77 million Americans will be age 65 or older.[3]

SENIOR LIVING MARKET OUTLOOK

According to a 2023 NIC Executive Survey, over 50% of senior living operators have experienced a liability insurance premium increase in the past year.[1] However, less than 10% of operators in the nursing care and assisted living spaces quantified those increases as significant. Just over half of independent living, assisted living, and memory care facilities surveyed reported slight increases. Nearly one-third of independent living, assisted living, and memory care segments did not see an increase.[1] However, operators are experiencing budget pressure in other areas. Between 85% and 95% of operators across all segments saw their property insurance premiums increase over the last year. Nearly a third (32%) said their property insurance costs increased "significantly," driven by climate change and more destructive weather patterns.

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Operators experiencing significant property insurance increases are sometimes seeking relief by choosing alternative liability insurance options.[1] A handful of new carriers without legacy losses have entered the market and are frequently offering coverage priced 10% - 15% below incumbents. While short-term cost savings may be attractive, agents and operators should consider the long-term consequences before making a switch. Insurers may view frequent carrier changes with skepticism, which could limit an insured's ability to obtain new coverage. Agents should encourage their senior living clients to take a long-term approach and a more comprehensive view before choosing to obtain coverage from a new carrier.

SENIOR LIVING MARKET CHALLENGES

While the industry has moved beyond the COVID pandemic, staffing shortages persist and can be one of the most influential factors in obtaining coverage. Nearly 20% of healthcare workers quit during the pandemic. Those who remained faced a stressful workplace due to lack of staff and new work demands.[2] Nursing homes also saw significant staffing losses during COVID. Nearly 250,000 workers, or 15% of the nursing home workforce, left the profession during the pandemic.[4] Unfortunately, the shortage is expected to worsen. The Bureau of Labor Statistics projects that the industry will face a shortage of 195,400 nurses by 2031 and lack 124,000 physicians over the next 12 years.[3] To overcome the labor gap, many healthcare providers, including senior living facilities, have turned to staffing agencies.

75% of nursing homes report reliance on staffing agencies to fill openings.[7]

A reliance on staffing agencies can create risk for facility operators. Temporary staff may not be fully trained in a facility's guidelines and policies. They may not have long-term relationships with residents, limiting their ability to fully understand a resident's needs. There can also be high turnover in temporary staffing agencies, which means the facility could experience an ongoing wave of new employees with little training.

Staff shortages and dependence on staffing agencies have elevated the legal risks for many senior living facilities. Many families and plaintiff attorneys are highlighting staffing issues in lawsuits, helping them obtain greater damages from facility operators. In 2023, a Florida assisted living facility was ordered to pay a family $12.5 million after a resident died as a result of an untreated open bedsore. The family's attorney cited staffing issues as part of the complaint.[5]

A recent Supreme Court decision may also open the door to expanded legal theories and more lawsuits against senior living facilities, especially those that accept Medicare and Medicaid. In *Health and Hospital Corp vs. Taleski*, the Supreme Court held that certain rights contained in the federal nursing home regulations could be enforced through a private civil right action against an Indiana-based healthcare system. The healthcare system argued that aggrieved parties should seek recourse through the Medicare/Medicaid oversight system. However, the Supreme Court felt otherwise, ruling that the Tavleski family did have the right to bring litigation against a healthcare system even if oversight options were available through Medicaid or other public funding systems.[6]

Plaintiff attorneys are also redesigning their litigation playbooks against senior living providers. In the past, most lawsuits were based on specific acts of negligence. The cases would focus on alleged wrongdoing by specific staff members for failing to provide certain care. Today, attorneys are also focusing on the entire senior living facility. Rather than alleging negligence by staff members, they focus on facility-wide issues like lack of staffing, non-compliance with policies, or under-funding. Attorneys may dig into the ownership of the facility or their financial records to illustrate that the facility is underfunded. They may request personnel records to demonstrate that the facility was understaffed or examine training materials, policies, or procedures, and much more. When the litigation becomes about the entire facility's operations, ownership and management, lawsuits can quickly expand and add defendants. For a facility operator, an isolated incident can quickly become a significant legal liability for the entire organization.

HOW AGENTS CAN HELP

There are steps facilities can take to help minimize risk and manage insurance costs. Senior living insureds should generate complete and consistent documentation about staffing, protocols, policies, and resident care guidelines. Providing a solid training program for all new staff, including those from third-party staffing agencies to effectively align all staff members with facility expectations is also part of robust risk management.

Facilities should also work to set appropriate expectations for new residents and their families. If a facility provides limited nursing care, it is important that residents and their families understand the scope of care. Often lawsuits arise because the family expects their loved one to receive skilled nursing or medical care that is beyond the scope of what the facility actually provides.

BOTTOM LINE

The senior living market is now more stable after several years of rate hikes and a focus on underwriting discipline. Facilities with a clean litigation history, clear and consistent documentation and policies, and robust staffing may be in a better position to avoid significant price increases. While new carriers may offer short-term price relief for facilities looking to trim the budget, that relief could be temporary as new entrants experience losses and adjust pricing accordingly.

Agents can best serve their senior living facility clients by partnering with a knowledgeable wholesale broker that can assist in taking a long-term view of their protection options. While a carrier change may be tempting and appropriate in some cases, remaining with an incumbent could be the wiser option. CRC Group is home to brokers with extensive experience in the senior living space that can help you find the right coverage for each client's unique needs. Contact your CRC broker today to learn more.

GUEST CONTRIBUTOR

Rebecca Adelman is an entrepreneur, influencer, thought leader, and founder of Adelman Claims Management, established in 2001. For nearly 30 years, Rebecca has concentrated her practice in long-term care insurance defense and claims management along with practice areas including employment, business, and general liability. Adelman Claims Management provides Claims & Litigation Management services for Future Care RRG, Inc., a risk retention group offering professional, general, and employee benefits liability as well as other supplemental coverages for senior care providers in thirty-two states. Learn more about Future Care RRG, Inc. **here**.

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END NOTES

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