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GRAHAM ADVISOR

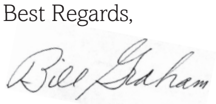
COMMENTS FROM THE CEO

One of the most important principles in our firm's success during the past 50 years has been to listen and anticipate. This guiding principle has proven critical in helping us identify solutions before our customers realize they need them. Take, for example, The Graham Company's Health and Human Services Division, established in 2010 after we listened and identified the unmet risk management needs facing many health and human services organizations. But we didn't just jump in; we listened and responded with industry expertise from a dedicated health and human services division supported by a staff that includes insurance producers, attorneys and certified health safety professionals.

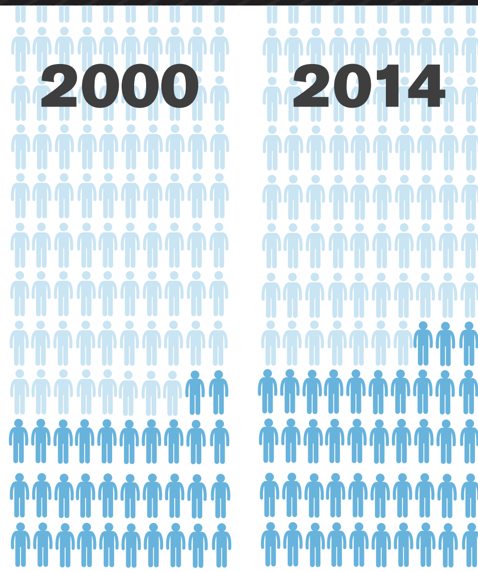
Today, this division is the fastest growing at our firm. It operates as the outsourced risk management solution for continuing care communities, aging service providers, behavioral health facilities and other healthcare organizations. With a client portfolio comprising nearly $5 billion in annual revenues, 50,000 employees and 2,500 facilities in 38 states, this division has the technical expertise to properly structure all lines of coverage based on an organization's unique operations.

I encourage you to read this newsletter for a taste of our expertise and contact the authors if you want to learn more. Or contact me at feedback@grahamco.com.

Best Regards,

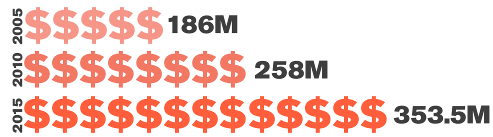


WILLIAM A. GRAHAM, IV
CPCU, CLU, CEO

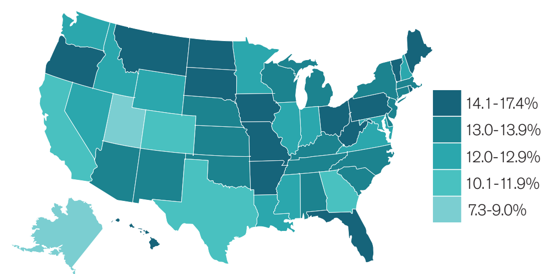


THE POPULATION OF THOSE AGED 65 AND OLDER IS 40.3 MILLION – UP 13% FROM 2000.

VALUE OF THE LONG-TERM CARE MARKET IN THE U.S.



PERCENT OF POPULATION 65+ BY STATE IN 2010



Source: 2010 Population Estimates from the U.S. Bureau of the Census

LEGALITY REALITY:

Litigation on the Rise for Long-Term Care Industry

How to protect your organization in a plaintiff-friendly environment

We've all heard the late-night television commercials of the 1990s and 2000s: "Have you or a loved one been diagnosed with mesothelioma or other asbestos-related diseases? If so, you may be entitled to compensation." While those commercials may air less and less today, they've been replaced by plaintiff firms nationwide encouraging the pursuit of elder abuse and neglect claims, promising substantial compensation in return. Moreover, the increased awareness of elder care abuse correlates with a steady rise in litigation against LTC providers. In a study of 1,465 homes in 48 states, there were 4,716 claims filed between 1998 and 2006; this is an average of one claim every two years per home, with 61 percent resulting in payment.

But the reasons for the rise in litigation go much deeper than late-night television ploys. Rather, this plaintiff-friendly environment is an amalgam of several factors. For starters, the Baby Boomer Generation, which is 78 million strong, is already making unsustainable demands on federal entitlement programs Medicare and Medicaid. The former has led to a rise in potential plaintiffs seeking creative measures to improve their financial standing through baseless lawsuits. And as the commercials illustrate, it's not just exploitative plaintiffs that are fueling the rise, but also a hungry plaintiffs' bar that is now aggressively encouraging such lawsuits. Take those factors and consider the thousands of non-profit LTC providers that cannot afford the media scrutiny of a high-profile trial and are thus apt to move to a quick settlement that lacks any strategic decision, and there's a perfect storm for exploitation in the industry.

FAVORABLE CLIMATE CREATES PERFECT STORM

But the aforementioned factors still beg the question, "Why now?" Lawyers prosecuting health professional liability actions traditionally sued doctors and hospitals, but tort reform and improved risk management measures lowered suits against hospitals/doctors, leading to an increased focus on LTC facilities, such as nursing homes and continuing care retirement communities (CCRCs). At the same time that tort reform diminishes typical breadwinner cases, the following factors add to the allure of LTC litigation:

CONTINUED ON INSIDE

PREVENTION STILL THE BEST MEDICINE

With a pervasive plaintiff-friendly legal environment, it's more important than ever for today's LTC facilities to adopt preventative practices. It is mission critical that facilities host frequent mandatory education sessions that address the common oversights driving the majority of lawsuit claims:

- Safe patient handling
- Proper supervision of immobile patients (proper feeding, cleaning, pressure ulcer prevention)
- Warning signs related to patient abuse/sexual abuse
- Correctly identifying which level of care a patient requires
- Exactly following the Individual Care Plan and direction of the medical director
- Coordination between the medical director, a resident's personal physician and nursing staff

PROTECT CAREGIVER HOURS

In addition to a well-informed staff, honestly evaluate the ratio of caregiver hours to patients. While the Assisted Living Federation of America (ALFA) leaves the issue of staffing flexible so each individual facility may decide what is best for their residents, this only puts greater accountability back on the facility operator.

To determine if a facility has enough staff to meet or exceed its state-mandated staffing ratio, simply take the total amount of patients currently in the facility and multiply by the mandated ratio and then divide that by the number of hours each employee works in a day.

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Many CEOs will opt to lay off maintenance staff over caregiver staff in an attempt to cut operating expenses without sacrificing the level of care. But this is a common mistake because trash still needs to be emptied and bed sheets still need changing – only now the caregivers must perform these custodial duties, distracting them from their normal duties and leading to negligence and carelessness that any plaintiff's attorney will be able to blame directly on the ratio of caregiver hours to patients.

DOCUMENT & IMPLEMENT

Finally, while most facilities correctly document policies and procedures that dictate the guidance for care, many facilities ultimately fail to implement them. Without implementation and policy enforcement, a facility is at even greater risk if a suit is filed against it because there is the written acknowledgement of proper procedures but the failure to uphold staff members to those written standards. It is imperative that all staff be held accountable for the implementation of policies and procedures, especially all C-level and senior management staff, because a top-down culture will be the most effective implementation method.

TRANSFER RISK BEFORE A CLAIM

Another effective way to reduce a facility's exposure to claims and the corresponding costs associated with them is to leverage another party's insurance policy – for LTC facilities this means a review of all contracts with outsourced professionals (physical therapy, rehab or other therapy providers, even dining services and beautician services) to access the proper indemnification provisions. Most facilities consistently obtain certificates of insurance from outsourced rehabilitation professionals and other contracted workers, but that is not enough. A good contractual risk transfer process consistently contains three key elements: consistent insurance requirements, specific indemnification wording in contracts and a requirement for Additional Insured coverage from vendors.

TAKE CONTROL OF CLAIMS

Effective claims management starts with the proper investigation of every situation and claim, no matter how small. Without a cap on punitive damages, it does not take a large claim to yield a large settlement. Proper investigation procedures must always include root cause analysis, witness statements and chart reviews. Also, a representative from the facility who has been trained in proper family communication procedures should speak with the family.

INSURE RISK

Facility operators should meet with a trusted insurance advisor to review current liability policies to ensure proper coverage is provided. In particular, evaluate if policies cover sexual abuse (related to provider/resident and even resident/resident situations), punitive damages (where allowable by law and with "most favorable venue" wording), knowledge of "occurrence" and selection of counsel requirements, to name a few key policy areas. It will also be important to understand who exactly has "Named Insured" status on the policy. Many policies can vary as to employees, volunteers, medical directors, independent contractors and others and their status as insureds.

BROADER-REACHING IMPACT

Elder neglect and abuse is this decade's mesothelioma – and if we don't act now to prevent and manage claims, the rise in LTC litigation and the plaintiff-friendly environment have the potential to forever change the composition of one of the most in-demand sectors of today's healthcare industry.

To learn more about how to protect your organization, contact Timothy E.J. Folk, Vice President, at tfolk@grahamco.com or 215.701.5231 or Rafael Haciski, Esq., Producer, at rhaciski@grahamco.com or 215.701.5290.

ASK THE EXPERT

Tom Morrin on Accountable Care Organizations

Q. What is the best way for healthcare providers to address the legal and financial risk exposure of joining ACOs?

A. The Patient Protection and Affordable Care Act (PPACA) encourages the development of Accountable Care Organizations (ACOs), under which multiple providers come together to improve the quality of patient care and reduce Medicare spending. While this new operating model seeks to achieve significant cost savings, adopting it can expose healthcare providers to a considerable amount of legal and financial risk that may not be contemplated in their current risk management and insurance program. A few of the major areas of risk exposure include: Privacy and HIPPA Risk, Regulatory and Compliance Risk and Contractual Risk Transfer. It's important that providers work closely with their insurance broker to evaluate their organization's exposure to these risks and to determine if coverage will be provided by their existing insurance program.

Q. Before signing an agreement with an ACO, what are the contractual considerations?

A. Contracts between ACOs and their providers will stipulate who is going to indemnify whom and who is going to provide "Additional Insured" status to whom. If contracts are not worded correctly, providers run the risk of being held responsible for loss that occurs, for which they otherwise would not be liable. If the provider's policy does not respond the way the contract obligates the provider to respond, there could be significant out-of-pocket costs to indemnify the other party or to fight a breach-of- contract claim. A healthcare provider's insurance broker should review the insurance, indemnification, and subrogation provisions of any potential ACO agreements before they are signed to ensure that what providers are contractually agreeing to is supported by their insurance program. An insurance broker should pay close attention to ensure the provider is not assuming another party's liability and examine how a provider's stand-alone insurance program will dovetail with the coverage provided by the ACO.

To learn more and ensure your organization's risk management program provides sufficient protection, please contact Thomas Morrin, Producer at The Graham Company, at tmorrin@grahamco.com or 215.701.5430

GRAHAM SIGHTINGS

Experts in the News

Tim Folk and Rafael Haciski on the rise of LTC
Long-Term Living, December 2013 Issue

Tim Folk and Tom Morrin on accountable care organizations
McKnight's Long Term Care News & Assisted Living online, February 2014

Kevin Smith on protecting renter data
MultiFamily Executive online, February 2014

Awards & Recognitions

Vice President and General Counsel Recipient of *Philadelphia Business Journal's* 2013 Corporate Counsel Award

Vice President and General Counsel A. Peter Prinsen, Esquire, CPCU, RPLU, ASLI, AIC was the recipient of *Philadelphia Business Journal's* 2013 Corporate Counsel Award in the Private Company category. This prestigious award was presented at an awards ceremony for the first time on December 12, 2013, by *Philadelphia Business Journal* to the Philadelphia region's top in-house counsel who have demonstrated commitment to their companies and communities.

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From Company updates and breaking industry news to insurance trends, follow us @TheGrahamCo and we'll deliver daily insight to keep your employees safe and your business thriving.

BENEFITS BRIEF

Consider Wellness

The Affordable Care Act (ACA) employer mandate is set to begin in 2015 and will require employers with more than 50 full-time employees to offer employees affordable healthcare or face a penalty. This will require all businesses to start planning now in order to minimize the impact of ACA on their organization.

One way employers have tried to minimize costs is by taking advantage of the many self-insured options available for employers with as few as 100 employees that combine the benefits of self-insurance, along with some of the predictability and protection of fully insured plans. By self-insuring, employers can minimize exposure to ACA-related fees and also forgo state-mandated coverage provisions. Self-insuring allows employers to have more control and not be subject to blending and risk pooling that may increase fully insured premiums.

When self-insuring their medical plan, companies should consider Wellness as part of their overall Benefits strategy. Favorable ACA rules related to Wellness provide employers with more opportunities to incentivize participation in Wellness programs. Employers can reap the rewards of healthier employees and lower medical inflation trends.

The Graham Company has partnered with BioSignia, Inc. to provide clients with the tools they need to succeed in employee Wellness. The BioSignia program provides biometric analysis and detailed reporting, along with personalized coaching, all keys to a successful program. As employers prepare for the next phase of ACA planning, Wellness initiatives along with a review of self-insurance options should be on the agenda.

If you are interested in learning more about The Graham Company's solution offered through BioSignia, contact Joe McGinty, Vice President - Employee Benefits Consulting, at JMcGinty@grahamco.com or 215.701.5292.

EXECUTIVE ANNOUNCEMENTS

The Graham Company Ranks at Top of Pennsylvania's Best Places to Work List

Team Pennsylvania Foundation, the Department of Community and Economic Development and the *Central Penn Business Journal* ranked The Graham Company as the number one company among small/medium-sized companies (25-249 U.S. employees) on its annual list of "Best Places to Work in Pennsylvania." The annual Best Places to Work list represents 100 companies with over 34,000 employees throughout Pennsylvania.

From Left: David Capitano, vice president of Accounting & Audit and Central Region Managing Partner, ParenteBeard LLC, Karen Boyle, Human Resources Specialist, The Graham Company, Gov. Tom Corbett and John Moran of Team Pennsylvania Foundation and President & CEO of Moran Industries.

"We believe that an enjoyable and rewarding workplace is a tangible difference-maker for our business, but we also believe it is simply the right way to treat our valued employees," said William A. Graham, IV, chairman and CEO of The Graham Company. "Receiving this honor as the best workplace in Pennsylvania is humbling, and we are most grateful for what this recognition represents: a workforce that feels valued and satisfied – both professionally and personally."

The rankings, which are compiled through a survey that is sent to employers and employees from hundreds of companies in the Commonwealth, were announced at an awards ceremony held at the Lancaster County Convention Center on December 5, 2013.

"Creating and sustaining a positive workplace is so essential to the success and future viability of our company that we long ago made it part of our corporate mission," Graham said. "Our mission pledges our dedication to the well-being and happiness of our employees, and our upholding of that mission for the past 50 years has helped us attract and retain best-in-class professionals."

THE GRAHAM COMPANY®
INSURANCE BROKERS AND CONSULTANTS

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