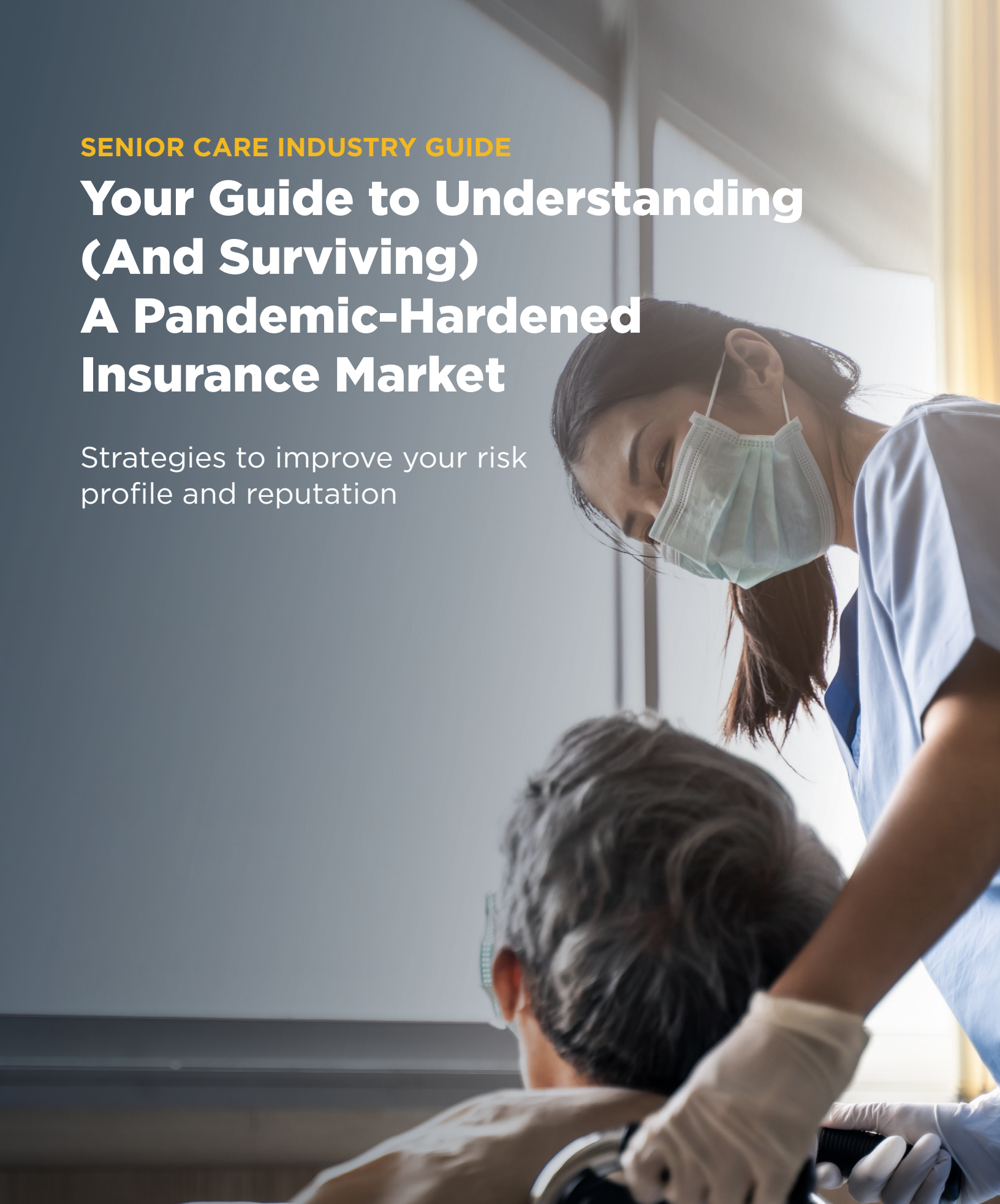


SENIOR CARE INDUSTRY GUIDE

# Your Guide to Understanding (And Surviving) A Pandemic-Hardened Insurance Market

Strategies to improve your risk  
profile and reputation

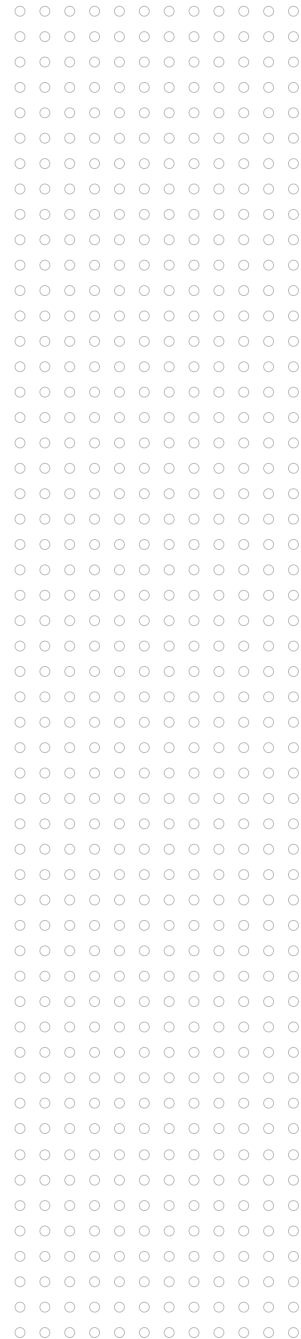


Even before the coronavirus pandemic began its spread across the United States, the senior care industry was an industry under pressure, escalating insurance costs being a capper. But as nursing homes, assisted living and other long-term care facilities have become the epicenter of the pandemic, the industry's skyrocketing share of the death toll has pushed it to the edge.

We have never needed residential care more given the unprecedented number of aging Americans, 74 million aging Baby Boomers. But the COVID-19 pandemic has compounded the sector's problems. Shrinking revenues with no new admissions and mounting mortality rates. New costs for protective gear and added nursing staff. Payments that were already under pressure. Razor-thin margins, especially for the for-profit centers.

Then there's the liability for the mounting deaths of residents and staff alike when nursing homes are COVID-19 hot spots. By May 8, 7,300 nursing homes and other long-term care facilities across the United States were identified with coronavirus cases. More than 135,000 residents and staff members at them have contracted the virus. More than 24,000 have died. That means more than a quarter of the U.S. deaths in the pandemic have been linked to long-term care facilities.<sup>1</sup>

At least 15 states have granted nursing homes immunity from lawsuits over COVID-19 deaths.<sup>2</sup> Yet, the pandemic's impact is having a profound effect on renewals moving forward. It's exponentially more challenging than the hard insurance market that had earlier been developing. Know what to expect and make sure your house is in order as you prepare for that battle. And if your organization didn't have a trusted broker/advisor before, that kind of expertise and knowledge is needed now more than ever.



<sup>1</sup> <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>

<sup>2</sup> <https://www.chicagotribune.com/coronavirus/ct-nw-coronavirus-nursing-home-liability-20200504-wlu7rvu2xnd5bcezb1pqa7exaq-story.html>

## How the pandemic aggravated the “hard” insurance market

A hard insurance market occurs as a correction to prolonged underpricing that hasn't kept pace with rising risks. Prior to the pandemic, the insurance industry had started pulling back from senior care after a decade of lower premiums, higher limits and expanded coverage terms. That started changing after a period of more frequent and severe claims left many insurers with inadequate reserves to cover their losses. Those not forced to exit the market began taking a hard look at their rates and limits – leading to higher corrective pricing and more disciplined underwriting.

Put simply, a hard market means fewer insurance options and higher premiums. Before the pandemic, every insurance line for the senior care sector, with the exception of workers' compensation, was on a sharp upward trajectory. Led by professional liability insurance, 2020 premiums were projected to rise by 10% to 30%.

Those increases now look tame by comparison. Renewals are much higher than projected across every line, including premiums and deductibles, and terms must be closely examined. There are COVID-19 exclusions. There are class action exclusions. Even more carriers are leaving the senior care market and there's a moratorium among many of the remaining on writing new business in the sector.

One larger client offering the spectrum of senior living options exemplifies the challenge with a 145% rate increase on its professional liability at renewal, a deductible that's expected to jump from \$50,000 to \$250,000 to \$500,000, and exclusions for class actions and COVID-19. It can manage the rate increase but five claims in a year would present a crisis.

Litigation has been a significant contributor to rising premiums anyway – a number of malpractice suits alleging negligent care and wrongful death of seniors in long-term care facilities had verdicts surpassing \$10 million in 2019. The worry over litigation hangs increasingly heavy over the industry. And while many states have granted immunity from litigation with the proviso that cases of “gross negligence” won't be protected, that's something as challenging to prove as disprove.

Recent notable verdicts for senior care neglect

\$200  
Million



Awarded by a jury to the estate of a **Florida** nursing-home resident who died after falling down a flight of stairs in a wheelchair. An appeals court in 2014 upheld the award.

\$28  
Million



Verdict involving a resident's fall in a skilled-nursing facility in **Kentucky** in 2017

\$7.6  
Million



Awarded in a wrongful-death suit against a skilled-nursing facility in **Georgia** in 2018.

**Other difficult venues include:** Arizona, California; Cook County, Illinois; New Jersey; New Mexico; New York; and West Virginia

Source: CRC Group

# Your Best Defense: An Exemplary Reputation and Risk Management Profile

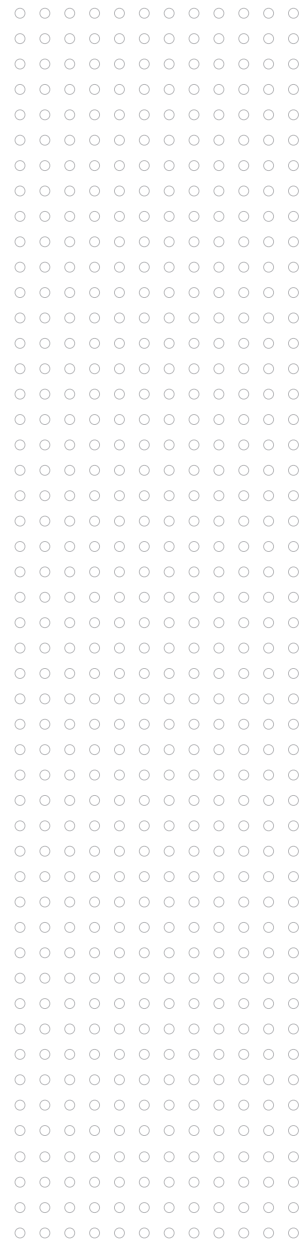
Senior care facility operators that strive to develop and live up to the highest standards of care and performance will put themselves in the best position to avoid legal actions and facilitate smoother insurance renewals.

Start by focusing on practices in key areas that are the source of many claims:

**Show that you care.** Establish a positive relationship and set expectations with new residents and their families upon admission. Uphold it with high level, quality resident care and regular, open contact with families. People who believe their loved ones are well cared for are less likely to file claims.

**Hire smarter and keep good people longer.** Staffing issues are increasingly urgent as many liability claims stem from inconsistently delivered care. Meticulous vetting procedures will reveal red flags and also confirm employees' experience, knowledge, positive attitudes and affinity for seniors. Boost your recruitment and retention efforts by adding inexpensive benefits like mini-health plans and telehealth programs as enticements.

**Manage your reputation.** Future residents and their families aren't alone in checking the Centers for Medicare and Medicaid Services (CMS) star rating system and online reviews. So do insurers, who use CMS ratings to help guide underwriting and pricing decisions. They also routinely perform Internet searches to see who's saying what about which facilities on social media.



# Know and Adhere to Standards...and More

Regularly review standards under which your facility operates. Your protocols and procedures for communicating and training around them is key to ensure adherence. Proactively plan against risks. Here's where to focus:

**Know required quality and performance standards and risks.** Most senior care facilities provide services under Medicare and Medicaid, meaning they must meet over 150 standards at all times. Many relate to common dangers and sources of claims – like slips, trips and falls. They can be easily monitored internally by regular spot-checks of areas like the cafeteria, hallways and doorways, stairs and elevators for obstructions and poor lighting. Immediately address issues.

## Best Practice Tip

Before your annual survey by the Centers for Medicare and Medicaid Services (CMS), ask your insurance broker what risk management services are provided, and if a pre-survey review of your compliance with CMS standards is among them. If not, consider retaining an independent risk consultant for the job, and don't forget to keep your broker informed.

## Establish HIPAA standards compliance procedures and follow them.

Medical records alone can be a litigation landmine if not carefully managed, especially with electronic record-keeping.<sup>3</sup> The medical records request process must meet HIPAA guidelines on who has the legal rights to access patient records and more — how records are prepared, approved, finalized and sent. This is critical especially since at least of half of records requests are legal requests.

## Best Practice Tip

You should designate an individual responsible for the medical records request protocol, and require them to get annual training to stay up to date.

<sup>3</sup> <https://www.hubinternational.com/blog/2018/10/medical-records-management/>

**Be the master of your service relationships.** A master service agreement (MSA) allows you to manage future dealings with all your contractors, from janitorial services to rehab services. Through it, you can specify terms for services, fees and conditions to govern future agreements. It's an effective way to allocate risk and provide indemnification.

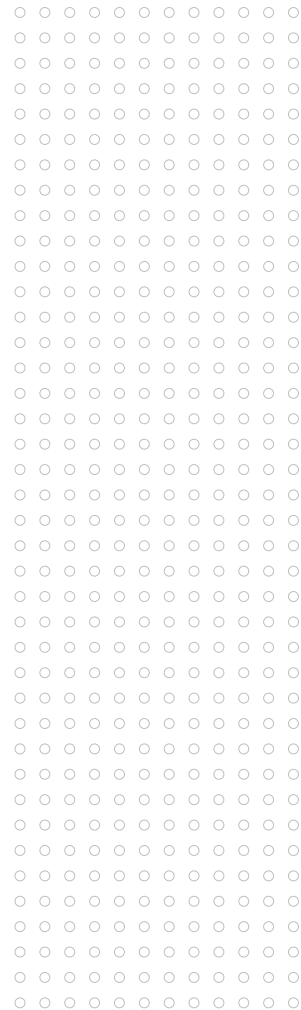
**Best Practice Tip**

Your MSA should be signed by every contractor. Each also should provide an up-to-date certificate of insurance conforming to the MSA guidelines.

**Be ready for crisis.** An effective crisis management plan will guide how you respond to both operational and communications crises, and will help counter the worst of the blowback when they occur. A plan is particularly important for multi-unit organizations, where the response process can be complicated by management layers.

**Best Practice Tip**

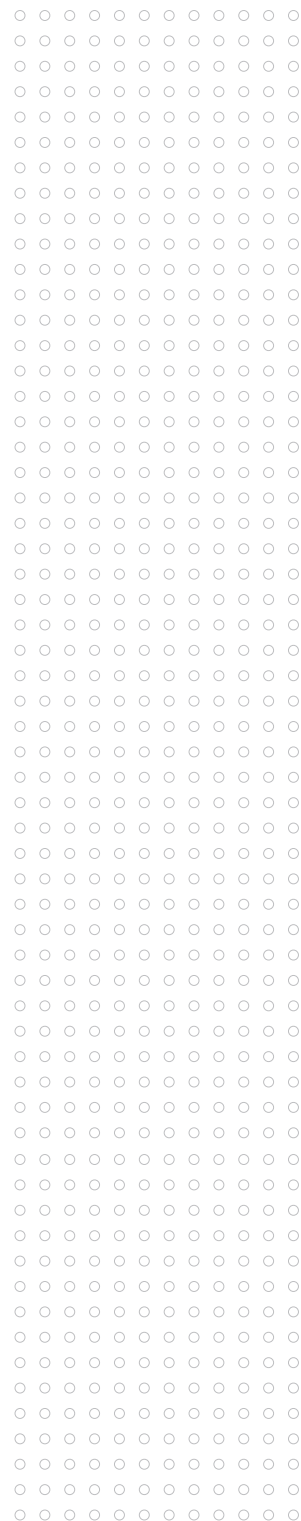
A response team at the corporate level should set protocols and liaise with various units on how to address issues. A single, qualified spokesperson should be designated to provide a controlled and accurate message.



# Your Insurance Broker Is Your Partner — How You Can Meet in the Middle

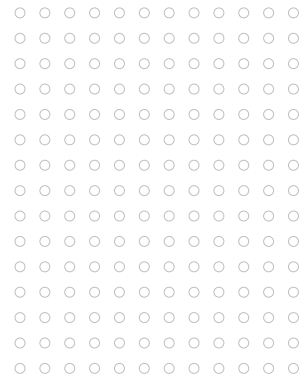
You don't have time to become an insurance industry expert. That's why you need an experienced insurance broker. Look for a healthcare industry specialist who ideally specializes in senior care and knows how to help you plan for renewals and be your advocate with insurance companies. Here are six ways to make the most of the relationship:

- 1. Have regular meetings.** Begin planning for your next renewal at least 120 days in advance. But also engage in regular reviews of your losses year-round. The better your broker understands them, the better equipped he or she is to negotiate at renewal.
- 2. Establish a relationship with your insurer, too.** A good insurance broker will foster long-term relationships between his clients and insurance companies. The better they know each other, the better they'll respond to negative news. Insurers are willing to reward accounts that remain loyal versus those who shop every renewal for the lowest price. Longer-term relationships make for better business all around.
- 3. Take on more of your own risk.** Consider shouldering more of your own risk and taking it off the insurance company as a way to reduce your premium. Your broker can restructure your insurance program by reviewing account limits and replacing first-dollar coverage with deductibles and retentions. Sharing risk with your insurers sends a strong signal that you are serious about actively managing your loss exposure.
- 4. Know your numbers and tell your story.** Be proactive. Tell your broker and insurer what you're doing to prevent future losses. Make sure you are familiar with your large losses (\$100,000+) and loss trends so you can demonstrate to the carrier that you understand their root causes.



**5. Best terms require best information.** When applying for or renewing coverage on your behalf, your insurance broker needs to develop a high quality submission with detailed information. If you have had a large loss, it must be well-researched and explained in the most positive light possible. Every detail counts in today's hard market.

**6. Seek Alternative Markets.** If your broker hasn't suggested it, ask about the benefits of a captive or risk retention group for your medical professional liability coverage.





## CHECKLIST

# Choosing the Right Insurance Broker

You want to get advice from people who understand your business and know your industry, and that includes your insurance broker. Before choosing one, ask these important questions.

**How long have you been involved in the healthcare industry?**

You don't want to be the first. Your business is risky enough.

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**What percentage of your book are clients like me?**

Confirm that your broker spends most of his or her time in your industry and understands trends and issues that could impact your business.

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**How many insurance carriers can you bring to the table?**

Not all brokers have access to specialty insurance companies who serve the healthcare industry. A brokerage firm that is in good standing with top-rated carriers has the best chance of securing optimal coverage and pricing for your business.

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**In addition to insurance, what expertise and services do you offer?**

Your broker should introduce you to certified risk managers who know your industry and can help you address issues that are relevant to your business.

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**Can the broker review your contracts and advise you on risk exposures?**

Experienced brokers will review your insurance clauses in all contracts and advise you on changes you should make — at no additional charge. They should direct you to attorneys who know your business and can review your other business contracts for liability exposures.

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**What experience does the broker's staff have when it comes to claims?**

When you file a claim, both your broker and your account management team should be committed to advocating on your behalf with the insurance carrier.

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**What other services or expertise can the broker offer?**

Ask if your broker's services extend to employee benefits and human resources consulting. There are so many new ways to support your workforce and you need a specialist to advise you on benefits.

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