MEDICAL MALPRACTICE INSURANCE IN THE MASSACHUSETTS MARKET 2008

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Acknowledgements

This report was prepared by Kevin Beagan, Gerald Condon, Caleb Huntington, Cara Blank, Matthew Mancini and Walter Horn, staff from both the Health Care Access Bureau and State Rating Bureau within the Division of Insurance ("Division") - to report on the market for medical malpractice insurance in Massachusetts.

In the financial section of the report, the Division does rely on the insurance companies, the National Association of Insurance Commissioners and other regulatory agencies for the accuracy of all reported information.

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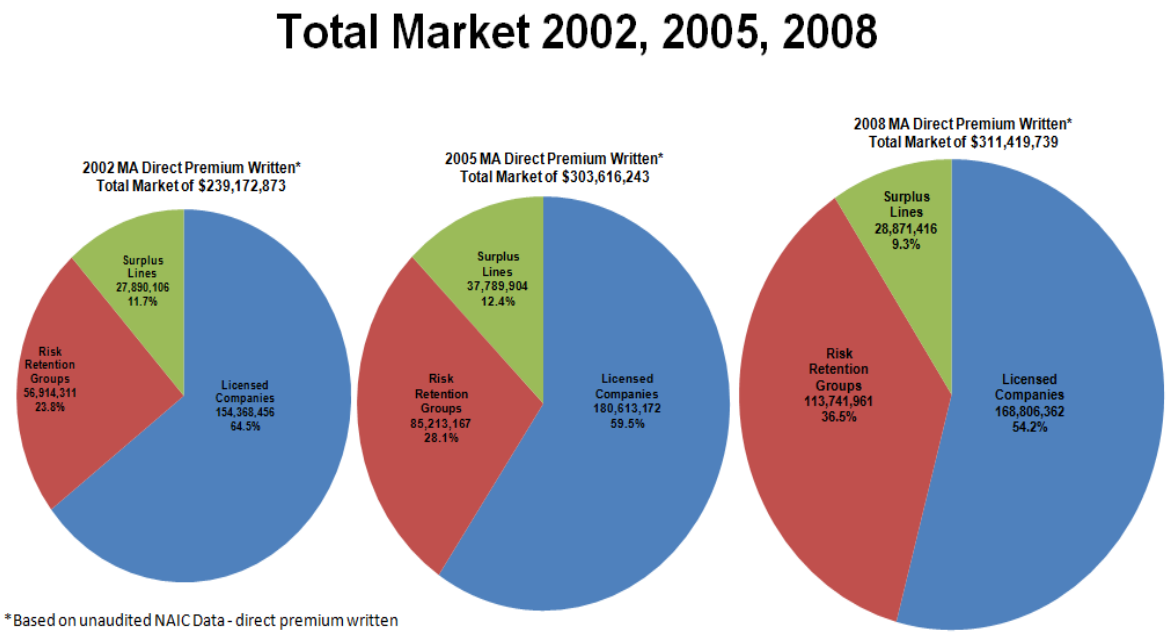
Executive Summary

Health care professionals make daily decisions about treatment where they balance the need to use new procedures with the need to contain costs and avoid errors that may harm patients. When an error may have occurred and malpractice is claimed, medical malpractice insurance covers the cost to defend professionals and pay claims for damages.

Massachusetts law requires that doctors have medical malpractice coverage[1] and that insurance companies make medical malpractice coverage available on an equal basis to all doctors and certain other licensed healthcare providers willing to pay for it.[2] Despite the availability of coverage, some providers have indicated that the cost of coverage is forcing them to think about dropping their practices or moving to other states to practice.

Among the material presented in this report:

- Massachusetts medical malpractice premiums written through insurers, Risk Retention Groups and surplus lines insurers increased from $239 million in 2002 to $311 million in 2008; an increase of over 30% in six years. Risk Retention Groups account for 36.5% of the market; 13.5% more of the market in 2008 than in 2002.



During the first half of the 2000's, the market for medical malpractice coverage was in disarray nationally and in Massachusetts. Some national companies were dropping coverage and others were filing for double digit rate increases. Over the past few years, Massachusetts licensed medical malpractice insurers' net operating ratios - company expenditures compared to premiums – declined from 147.9% in 2002 to 87.2% in 2008.

[1] 243 CMR 2.07(16).
[2] M.G.L. c .175, §193U.

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Massachusetts' Health Care Professionals

Number of Professionals

In 2009[3], there were over 237,000 individual health care professionals were licensed by state agencies to practice in the following licensing categories:[4]

133,544	Nurses
22,078	Social Workers
20,740	Medical and Osteopathic Doctors
19,563	Allied Health Providers (Therapists and Athletic Trainers)
7,235	Dentists
6,329	Allied Mental Health Providers
5,358	Psychologists
8,450	Audiologists and Speech Pathologists
3,093	Respiratory Care Specialists (full and limited licenses)
2,114	Chiropractors
2,171	Dietitians/Nutritionists
1,662	Dispensing Opticians
2,003	Physician Assistants
1,553	Optometrists
980	Acupuncturists
570	Podiatrists
164	Hearing Instrument Specialists
117	Certified Health Officers
96	Perfusionists (full and provisional licenses)

In addition to the above-noted individual professionals, almost 1, 800 facilities and programs were licensed to operate under the following types of entities:[5]

529	Nursing Homes/Rest Homes
298	Clinics
213	Home Health Care Agencies
181	Mammography Facilities
156	Hospitals (acute care, non-acute and virtual)
318	Ambulance services
74	Hospices

In order to practice in the Commonwealth of Massachusetts, a health care professional must be licensed or registered by agencies such as the Board of Registration in

[3] The best available information for medical and osteopathic doctors is for year-end 2007.

[4] Numbers of licensed health care professionals as reported to the Division of Insurance by the following agencies: Board of Registration in Medicine; Department of Professional Licensure and Division of Health Care Quality in the Department of Public Health; and the Department of Mental Health. The reported statistics reflect the number of licensed health care professionals; the number actively practicing in a profession may be smaller than the number reported.

[5] Numbers of licensed facilities and programs as reported to the Division of Insurance by the Department of Professional Licensure and Division of Health Care Quality in the Department of Public Health. While the reported statistics reflect the number licensed, the number actively operating may be lower.

Medicine,[6] the Division of Professional Licensure,[7] Boards of Registration,[8] the Department of Mental Health[9] or the Department of Public Health.[10] A health care professional may also need to satisfy additional training to represent that he or she is specially trained or board-certified in a specialty and may need to meet other requirements to practice in a hospital or to be included in a health plan network.

Liability Coverage Requirements

Almost all working healthcare professionals have professional liability coverage to protect them from claims for damages if work is not completed according to agreed-upon standards or expected outcomes. Health care professionals require special liability coverage because of the special risk involved in treating living bodies.

Even when a health care professional's decision may be appropriate based upon available information, there adverse outcomes may occur with long-term financial consequences. Medical malpractice coverage pays the cost to defend the health care professional's reputation and cover the potential cost of damages.

In Massachusetts, insurance companies that offer medical malpractice coverage are required to make coverage available on a "take all comers" basis – without declining the coverage of any one professional - for all who fall within the following statutorily identified categories when that insurance company is making coverage available to anyone else who is in that category:

Doctor of Medicine;
Doctor of Osteopathy;
Doctor of Dental Science;
Physical Therapists and Physical Therapist Assistants, licensed under M.G.L. c. 112;
Doctor of Podiatry;
Doctor of Chiropractic;
Registered Nurses, licensed under the provisions of M.G.L. c. 112;

[6] The Board of Registration in Medicine coordinates the licensing of doctors (MDs and DOs) and acupuncturists.

[7] The Division of Health Professions Licensure within the Department of Public Health coordinates the licensure for Dentists; Genetic Counselors; Nursing; Nursing Home Administrators; Perfusionists; Pharmacy; Physician Assistants; and Respiratory Care.

[8] Boards of Registration in the Office of Consumer Affairs and Business Regulation coordinate the registration of Allied Health Care professionals (*i.e.*, Athletic Trainers, Occupational Therapists, Occupational Therapist Assistants, Physical Therapists, Physical Therapist Assistants, Physical Therapy Facilities); Allied Mental Health Care professionals (*i.e.*, Mental Health Counselors, Marriage and Family Therapists, Rehabilitation Counselors, Educational Psychologists); Certified Health Officers; Chiropractors and Chiropractic Facilities; Dietitians and Nutritionists; Dispensing Opticians; Hearing Instrument (Hearing Aid) Specialists; Massage Therapist/Practitioners, Massage Therapy Salons, and Massage Therapy Schools; Optometrists; Psychologists; Licensed Independent Clinical Social Workers, Licensed Certified Social Workers, Licensed Social Workers, and Licensed Social Worker Associates; and Audiologists, Audiologist Assistants, Speech Pathologists and Speech Pathologist Assistants.

[9] The Department of Mental Health licenses private mental health hospitals and clinics.

[10] The Department of Public Health licenses hospitals, nursing/rest homes, long-term care facilities, clinics, home health care agencies, hospices, ambulances, nursing service agencies and mammography facilities.

Interns, fellows or medical officers; and
Licensed hospitals, clinics, or nursing homes, and their agents and employees.[11]

All other health care professionals outside the statutorily identified categories may apply for coverage with insurance companies, but the company has the right to decline coverage for these other health care professionals if they do not meet the insurer's underwriting standards.

It is a specific requirement of licensure that medical doctors have medical malpractice coverage sufficient to protect against claims of at least $100,000 per claim and $300,000 per year[12] and that chiropractors are required to have coverage of at least $500,000 per claim and $1 million per year.[13] Hospitals and health plans may impose additional requirements to permit health care professionals to practice in the hospital or to be part of a health plan network.

Market for Medical Malpractice Coverage

History

Medical malpractice insurance has gone through a number of national and regional "crises" over the past 35 years, with years of stability and available coverage, followed by years of rate increases and decreased availability. Following the departure of a number of medical malpractice insurers from the Commonwealth in the 1970s, the Massachusetts Legislature created the Medical Malpractice Joint Underwriting Association ("MMJUA") to offer access to coverage for certain medical professionals and authorized the MMJUA to assess other medical malpractice carriers for certain losses.[14]

During the 1980s, the medical malpractice insurance industry developed new types of policies to stabilize losses and premiums. Policies written before the 1980s were "occurrence-based" policies (covering all claims filed for an incident that occurred during a coverage year); many insurers switched to "claims-made" policies (covering only claims filed during a coverage year.)[15] Since losses under claims-made policies are more predictable, the new products enabled companies to stabilize their rating practices.[16]

In 1994, Massachusetts passed legislation to transform the MMJUA into the Medical Professional Mutual Insurance Company ("ProMutual") with a board composed mainly

[11] M.G.L. c. 175, §193U. The commissioner of insurance may also designate other categories as eligible when they are also eligible to be ceded to the medical malpractice reinsurance plan. Chapter 444 of the Acts of 2008 added physical therapists and physical therapist assistants to M.G.L. c. 175, §193U.
[12] 243 CMR 2.07(16).
[13] 233 CMR 4.04.
[14] Section 6 of Chapter 362 of the Acts of 1975.
[15] "Medical Malpractice: Implication of Rising Premiums on Access to Health Care," General Accounting Office, August 2003, p. 10.
[16] In Massachusetts, only one company – the MMJUA's successor - is required to offer "occurrence-based" and "claims-made" coverage, while other companies have switched to "claims-made" policies.

of practicing or retired healthcare providers.[17] Since its inception, ProMutual has been one of the largest medical malpractice insurance companies in Massachusetts. Medical Malpractice coverage in Massachusetts is written by insurance companies, surplus lines companies, and Risk Retention Groups.

Licensed Insurance Companies

Medical malpractice insurance companies must be licensed by the Division of Insurance with a designation for "medical malpractice" and are required to participate in the state's guaranty fund for property and casualty writers that provides some protection to policyholders in the event of an insurer's insolvency. In 2008, licensed medical malpractice insurance companies wrote $168.8 million in direct written premium; this is about 1.6% of the premium written for all property and casualty coverage. (Figure 1)

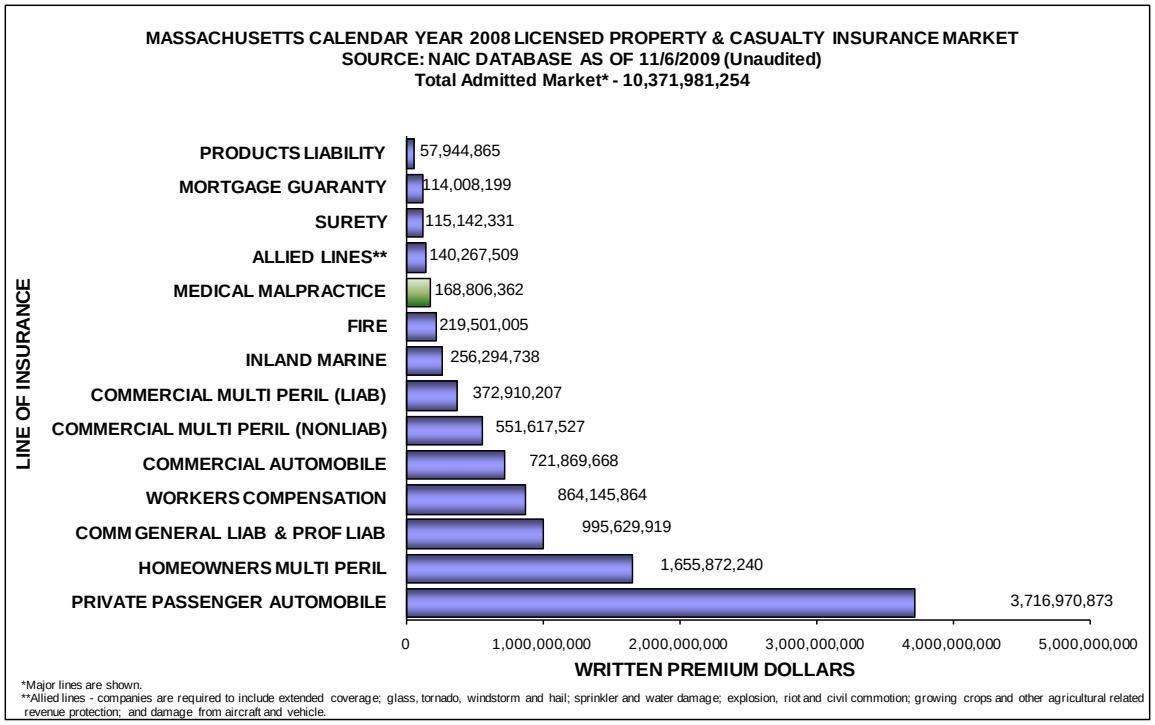
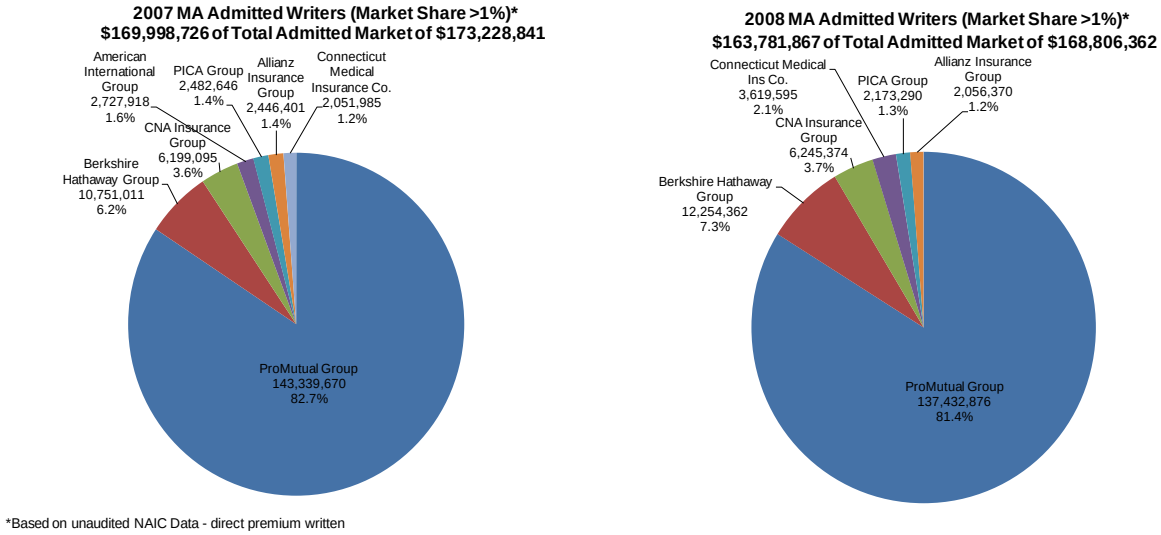


Figure 1

The Division of Insurance maintains a list of medical malpractice insurance companies on its website[18] identifying the "take all comers" classes of health care professionals written by the company. The list of licensed insurance companies writing medical malpractice coverage in 2008 is in A-1 on page 21**.**

[17] Chapter 330 of the Acts of 1994 created M.G.L. c. 175, § 193U. This law was further amended – Chapter 372 of the Acts of 1998 - to make clear that the coverage offered to each provider must be available at least at a certain standard level as defined in the rules of operation of the medical malpractice reinsurance plan.

[18] The Division's website indicates the companies that write to each of the designated classes of providers http://www.mass.gov/?pageID=ocasubtopic&L=5&L0=Home&L1=Business&L2=Insurance&L3=Commercial+Buyers&L4=Medical+Malpractice+Insurance&sid=Eoca



*Based on unaudited NAIC Data - direct premium written

Figure 2

As noted in figure 2, the ProMutual Insurance Group – composed of Medical Professional Mutual Insurance Company and ProSelect Insurance Company - had the predominant share of the 2008 insurance market collecting approximately 81.4% of total premium. This is a slight decrease from its 82.7% market share in 2007.

Surplus Lines Carriers

Separate from the licensed insurance companies, health care professionals may also turn to surplus lines carriers for medical malpractice coverage. Surplus lines carriers are not licensed in Massachusetts but are licensed as an insurer in another jurisdiction and can issue coverage through specially licensed brokers to those who cannot obtain coverage from insurers licensed to do business in Massachusetts. Surplus lines carriers are not subject to Massachusetts insurance law – such as the "take all comers" requirements - and do not participate in state's guaranty fund. The Division of Insurance maintains a list of surplus lines carriers on its website.[19] The list of surplus lines carriers writing medical malpractice coverage in 2008 is in Appendix A-2 on page 22.

[19] The list is located at http://www.mass.gov/Eoca/docs/doi/Companies/SurplusLines.pdf

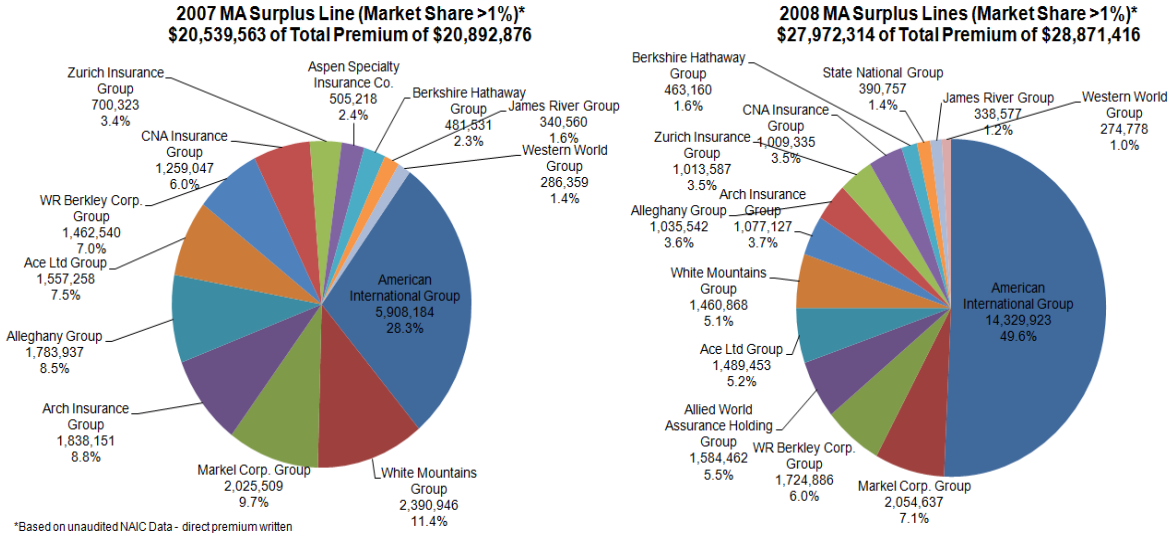


Figure 3

The largest surplus lines medical malpractice carrier in 2008 was the American International Group (including Lexington Insurance Company) accounting for 49.6% of the 2008 medical malpractice surplus lines market. In 2007, American International Group accounted for 28.3% of the market for surplus lines insurers. (Figure 3)

Risk Retention Groups

Separate from both insurance companies and surplus lines carriers, medical malpractice coverage may also be offered through Risk Retention Groups ("RRG") which under federal law[20] may offer liability coverage in any state provided the RRG is licensed as an insurance company in at least one state. RRGs are specifically exempted by federal law from participation in state guaranty funds and are not subject to the "take all comers" requirements that apply to licensed insurance companies.

Under federal law,

1. An RRG can be formed and owned only by members who are engaged in a similar business or activity and with similar liability risk exposure; and.
2. An RRG cannot exclude eligible members solely to reduce the RRG's risk of loss.

[20] Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, with related M.G.L. c. 176L.

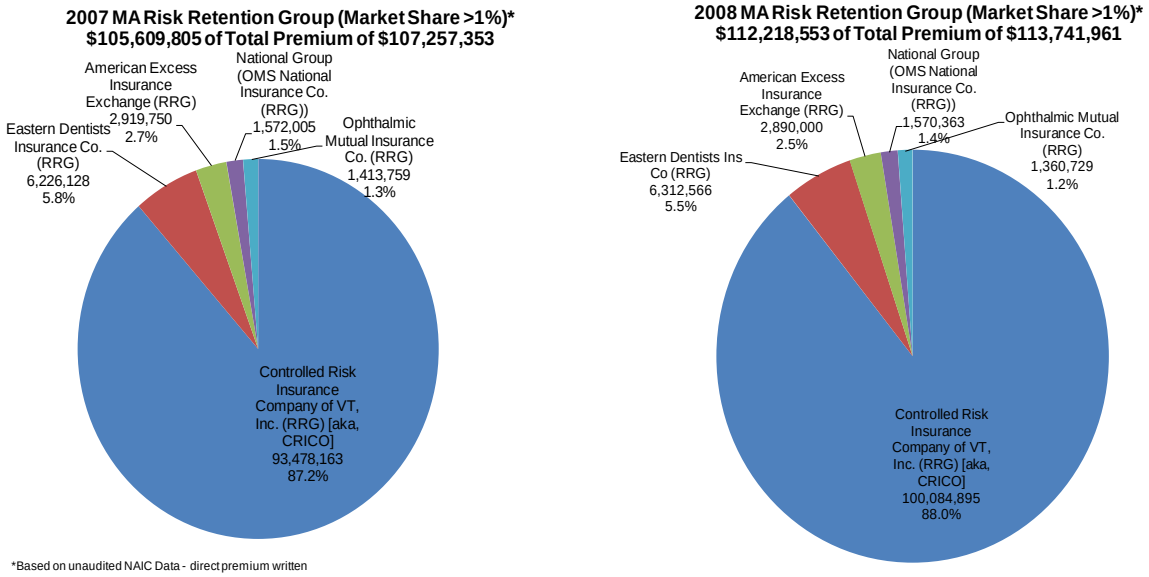


Figure 4

The Controlled Risk Insurance Company of Vermont RRG – also known as CRICO - has the predominant share of the RRG medical malpractice market collecting 88% of premium in 2008 and 87% in 2007. CRICO was created in 1979 to provide professional liability coverage to the physicians and employees of Harvard-affiliated medical institutions.[21] According to CRICO's business plan, physician applicants must meet CRICO underwriting criteria and are assigned to one of 80 underwriting specialties based on level of risk exposure.

The three next largest RRGs collectively account for about 10% of the market, and some of them write coverage for specialty providers. The list of RRGs that were writing medical malpractice coverage in 2008 is in Appendix A-3 on page 23.

[21] Founding members of the Risk Management Foundation eligible for CRICO coverage include:

Beth Israel Hospital Association;	Judge Baker's Children Center, Inc.;
Brigham and Women's Hospital;	Massachusetts Eye and Ear Infirmary;
Cambridge Health Alliance ;	Massachusetts General Hospital;
CareGroup, Inc.;	Massachusetts Institute of Technology;
Children's Hospital Corporation;	McLean Hospital;
Dana-Farber Cancer Institute, Inc.;	Mount Auburn Hospital;
Faulkner Hospital;	New England Baptist Hospital;
Harvard Pilgrim Health Care, Inc.;	New England Deaconess Hospital Corporation;
Harvard School of Dentistry;	Newton-Wellesley Hospital;
Harvard School of Public Health;	North Shore Medical Center;
Harvard University Medical School;	Partners HealthCare System, Inc.;
Harvard University Health Services;	Presidents/Fellows of Harvard University; and
Harvard Vanguard Medical Associates, Inc.;	Spaulding Rehabilitation Hospital.
Joslin Diabetes Center, Inc.;	

Shares of the Market

During 2008, the different carriers together wrote $311.4 million of medical malpractice premium with 54.2% written by insurance companies, 36.5% written by RRGs and 9.3% written by surplus lines carriers. In 2007 the different carriers together wrote $301.4 million of medical malpractice premium with 57.5% written by insurance companies, 35.6% written by RRGs and 6.9% written by surplus lines carriers. (Figure 5)

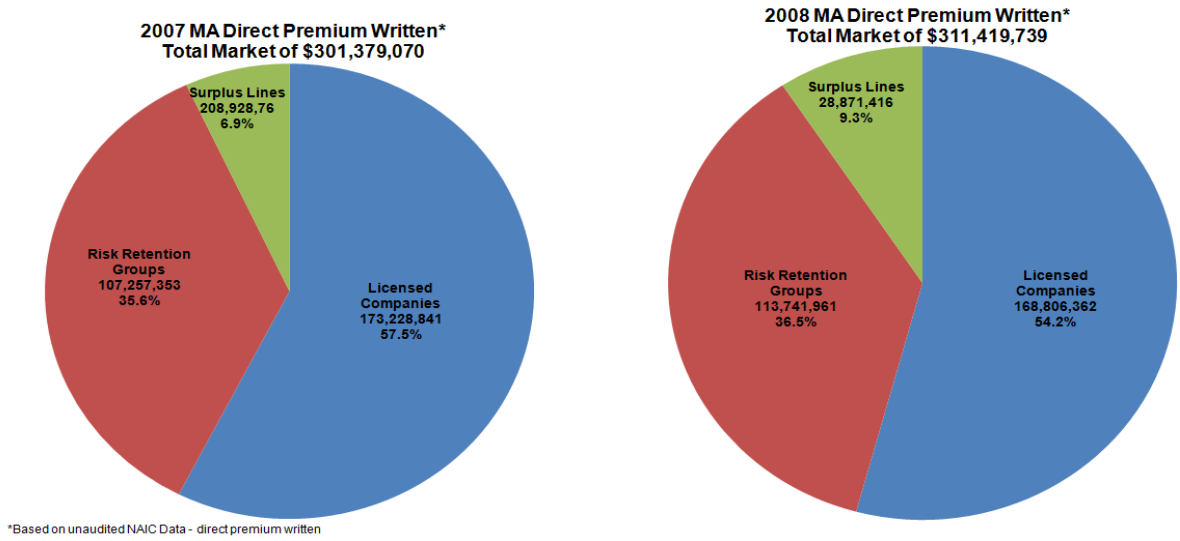


Figure 5

In 2002, 64.5% was written by insurance companies, 23.8% was written by RRGs and 11.7% was written by surplus lines carriers. (Figure 6)

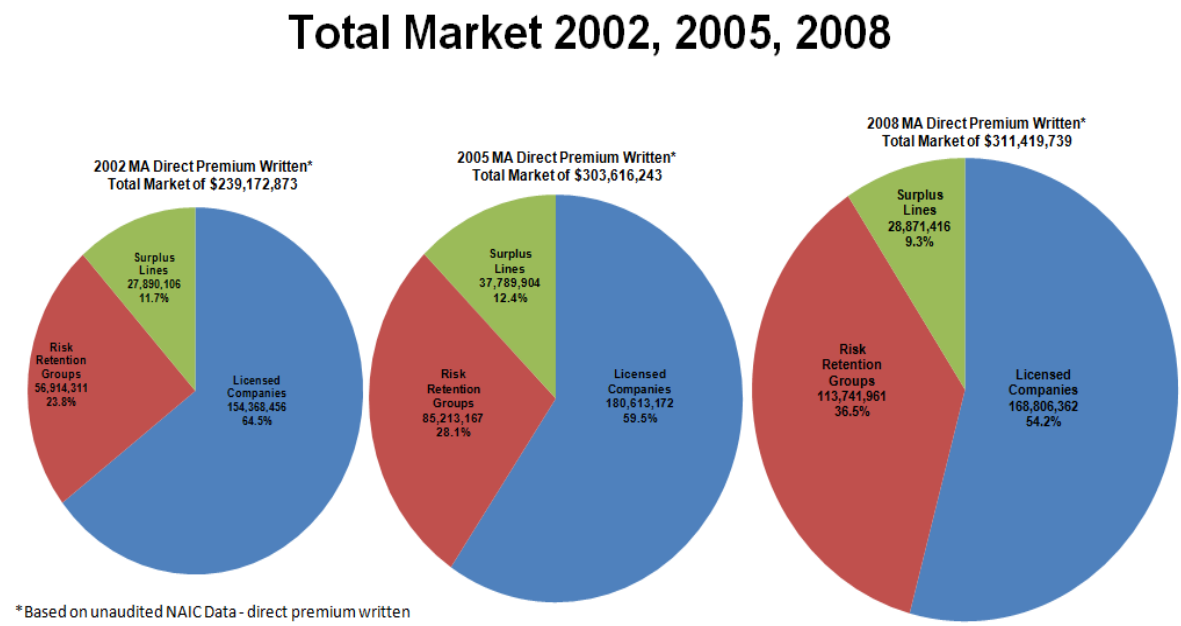


Figure 6

Financial Results for Insurance Carriers

Premiums

The $309.1 million earned in 2008 by insurance companies, surplus lines carriers and RRGs was 3.4% more than the $298.8 million earned in 2005 and 35.9% more than the $227.5 million earned in 2002. (Figure 7)

On an industry basis, licensed insurance companies earned $168.42 million in premiums in 2008 – 5.5% lower than the $178.1 million earned in 2005 and 10.0% more than the $153.0 million earned in 2002. RRGs earned $113.7 million in 2008 - 34.1% higher than the $84.8 million earned in 2005 and 106.7% more than the $55.0 million earned in 2002. Surplus lines carriers earned $27.0 million – 24.6% less than the $35.9 earned in 2005 and 39.2% more than the $19.4 million earned in 2002. (Figure 7)

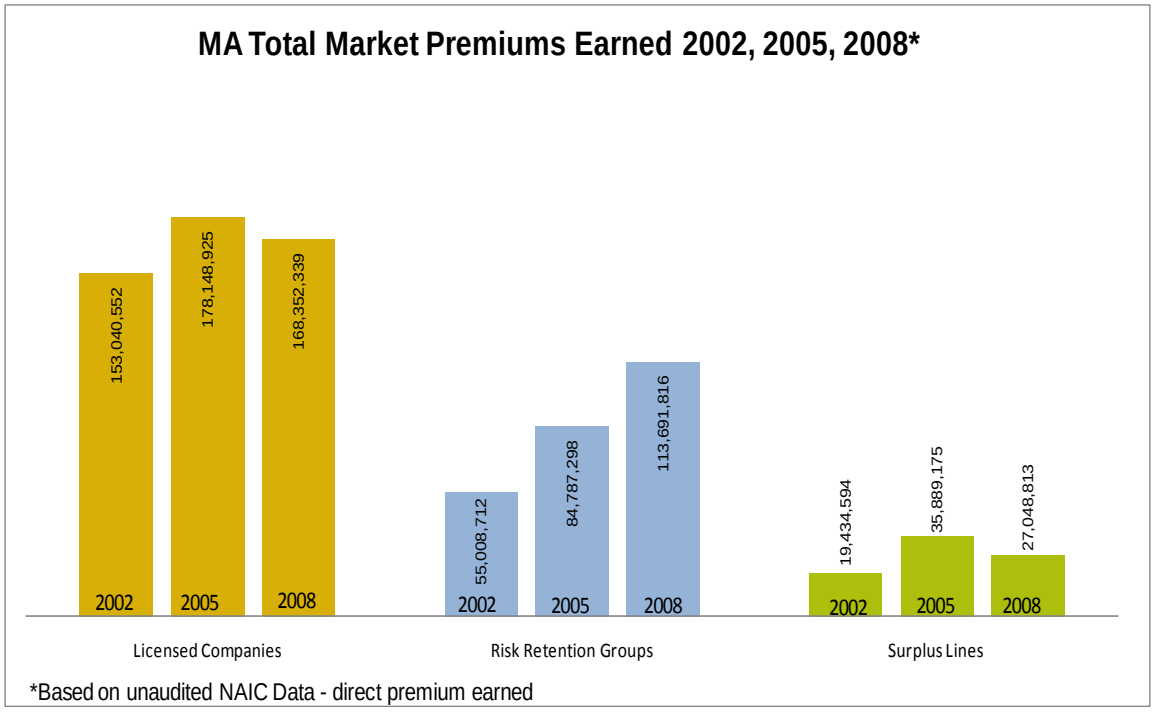


Figure 7

Costs

When setting premiums, companies need to account for projected medical malpractice claims, as well as loss adjustment expenses (designed to settle or defend claims), general administrative expenses, producer commissions, and reinsurance expenses. Claims dollars are important drivers of overall costs, but examining claims dollars on financial reports may not present a true picture of losses to compare with company premiums. In Massachusetts medical malpractice claims are resolved an average of 6 years[22] following

[22] National Practitioner Data Bank 2006 Annual Report, Table 13, Mean and Median Medical Malpractice Payment and Mean and Median Delay Between Incident and Payment by State, 2006 and Cumulative Through 2006 - Physicians*, p.74.

the malpractice incident. Reported losses may be associated with premiums that were collected 6 years ago.

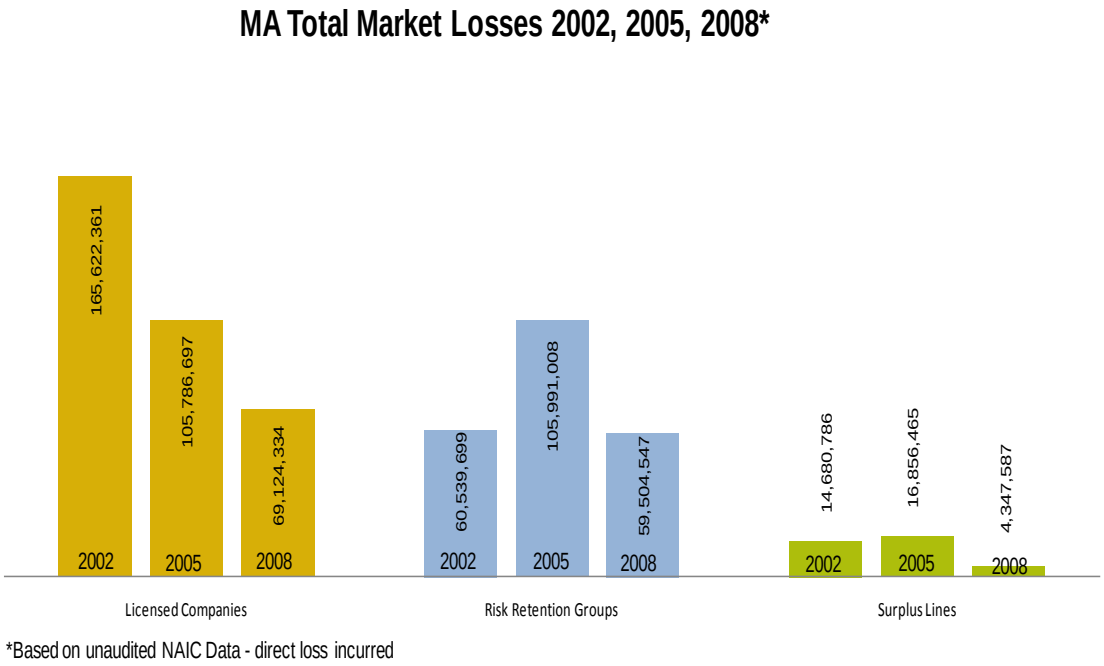


Figure 8

Massachusetts licensed insurance companies reported total claims losses of $165.6 million in 2002, greater than the $153.0 million collected in premiums.

On an industry basis, licensed insurance companies had incurred losses – those amounts that were reserved for claims that were open in the current year as well as amounts paid out for claims during a year – of $69.1 million 2008 – 34.7% less than the $105.8 million incurred in 2005 and 58.3% less than the $165.6 million incurred in 2002.

RRGs incurred $59.5 million in 2008 - 43.9% less than the $106.0 million incurred in 2005 and 1.7% less than the $60.5 million incurred in 2002. Surplus lines carriers incurred $4.3 million in claims in 2008 – 74.2% less than the $16.9 million incurred in 2005 and 70.4% less than the $14.7 million collected in 2002. (Figure 8)

Loss Ratios

Loss ratios (incurred losses divided by earned premium) are used to evaluate the underwriting success or failure of property and casualty insurance companies and assume that the lower the loss ratio, the higher the company's profit.

The calculated loss ratios for Massachusetts medical malpractice companies (licensed insurers, RRGs and surplus lines carriers) declined from 105.9% in 2002 to 43.0% in 2008. The loss ratios on a national basis for all medical malpractice companies declined from 92.6% in 2002 to 34.9% in 2008. (Figure 9)

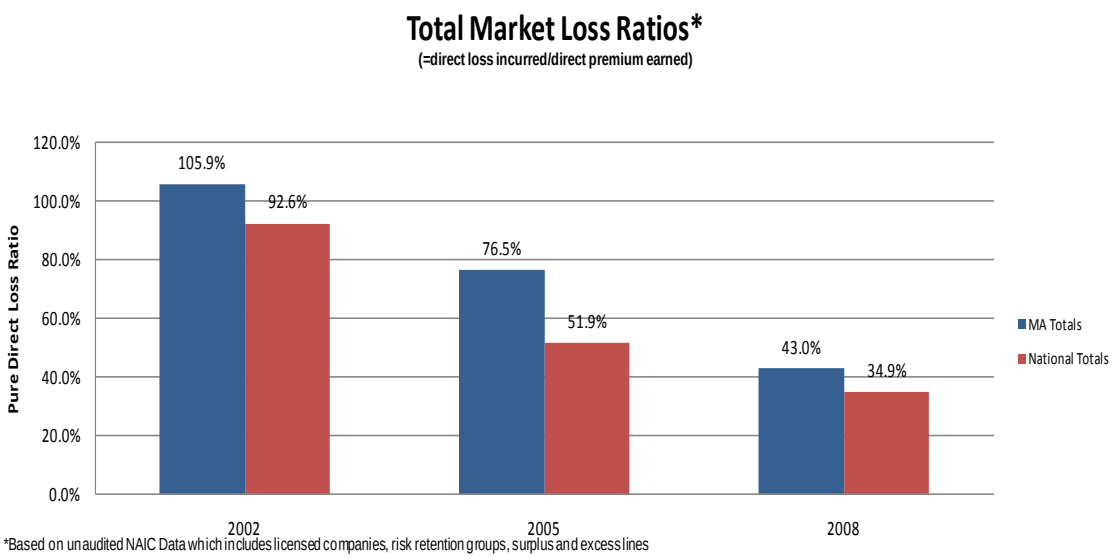


Figure 9

When examining each of the types of medical malpractice carriers in Massachusetts, the loss ratios decline for each. The licensed insurance companies' loss ratios declined from 108.2% in 2002 to 41.1% in 2008. The RRGs' loss ratios declined during this period from 110.1% in 2002 to 52.3% in 2008. The surplus lines carriers' loss ratios declined from a 75.5% in 2002 to 16.1% in 2008. (Figure 10)

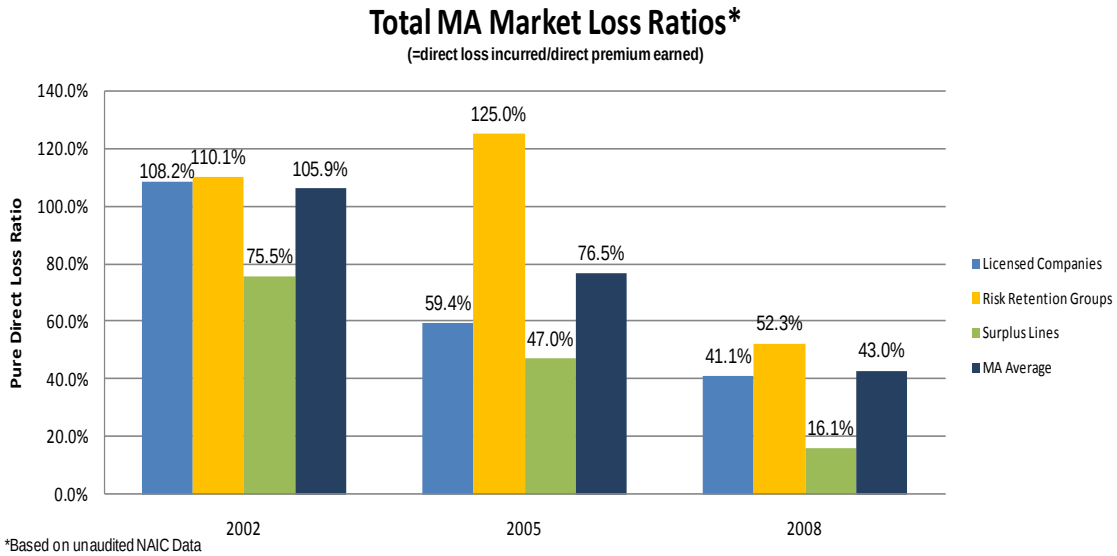


Figure 10

Combined Ratios and Operating Ratios

An adjusted combined ratio (the combination of company expenses and incurred claims divided by earned premium) can be a more effective measure of the overall experience of a property and casualty insurance company since it factors in other costs required to run an insurance company, including loss adjustment, acquisition and general expenses, as well as the costs of taxes, licensing fees, and mutual fund dividends.

Since companies do not report company-by-company expense experience, the following table - Figure 11 - derives general and other expenses based on aggregate reported financial information for licensed insurers – not including the RRGs and surplus lines carriers. The adjusted combined ratio with dividends calculation – column (L) – presents a more complete picture of company experience in the medical malpractice market. While the loss ratio for 2008 was 41.1%, the net operating ratio was 87.2%.

Calculation of Adjusted Combined Ratios -- Licensed Companies

			(C) =		(E) =		(G) =					(L) =	(M)	(N)=
	(A)	(B)	(B)/(A)	(D)	(D)/(A)	(F)	(D)/(A)	(H)	(I)	(J)	(K)	(G+H+I+J+K)		(L)-(M)
Year	Earned Premium ($000s)	Direct Losses Incurred ($000s)	Loss Ratio	Incurred Losses + ALAE[1]	Inc. Loss + ALAE Ratio	Incurred Losses + LAE[1]	Incurred Losses+ LAE Ratio	Commissions[3] + Other Acquisition Expenses[2]	Taxes and licensing Fees[3]	General Expense[2]	Mutual Company Dividends[3]	Combined Ratio w/ Dividends	Net Invest. Income Ratio[4]	Net Operating Ratio
2008	168,352,339	69,124,334	41.1%	117,005,461	69.5%	124,712,401	74.1%	11.0%	2.6%	6.4%	4.0%	98.1%	10.9%	87.2%
2005	178,106,248	105,784,320	59.4%	136,680,782	76.7%	144,388,148	81.1%	11.4%	2.8%	5.3%	1.9%	102.5%	18.0%	84.5%
2002	153,040,552	165,852,669	108.4%	208,628,119	136.3%	218,448,374	142.7%	11.4%	3.6%	5.2%	4.7%	167.7%	19.8%	147.9%

[1] "ALAE" represents allocated loss adjustment expenses (defense and cost containment expense). "LAE" represents all loss adjustment expenses.

[2] Percentages are calculated using countrywide data from A.M. Best's Aggregates and Averages.

[3] Percentages are calculated using Massachusetts "Page 14" Annual Statement data.

[4] Investment Income by line less investment expense. Source: A. M. Best's Aggregates and Averages.

Figure 11

Figure 11 includes one more calculation to derive a net operating ratio that is more reflective of medical malpractice insurance experience. Since medical malpractice is considered a "long-tailed line" where payments may not be made for many years after a claim has been filed, the net operating ratio considers the net investment income on reserves held to pay future claims. As illustrated in column (N) of Figure 11 when factoring in the net investment income ration the net operating ratio for licensed medical malpractice insurers was 147.9% in 2002, 84.5% in 2005 and 87.2% in 2008.

The above analysis does not reflect the net cost of reinsurance because this information is not readily available within the aggregate financial statements for Massachusetts medical

malpractice business. Based upon industry information, reinsurance is estimated to account for an additional 2-5% of a company's premiums.[23]

Premiums for Medical Malpractice Coverage

Factors Affecting the Cost of Coverage

Insurance company actuaries develop premiums to pay future expected claims losses and expenses, while also meeting company profit expectations and staying competitive with other insurance companies.

Claims

Actuaries examine prior losses and loss adjustment expenses to estimate trends in both frequency (the number of lawsuits filed) and severity (average claims payments per claim). Projecting future losses for medical malpractice is complicated because in such a "long-tailed line," claims may not be settled for 5-7 years after an initial claim is filed. [24]

Defense Costs

Medical malpractice claims may involve substantial legal costs to investigate and defend health care professionals from alleged negligence. Actuaries factor in projected cost of legal work leading up to and including the trying of a case.

Acquisition Costs, General Administrative Expenses and Taxes

In the course of doing business, companies pay commissions to producers (*i.e.*, agents or brokers) to acquire business, general administrative expense to operate their business and premium taxes and assessments.

Dividends

Insurance companies that are owned by investors (stock companies) or by policyholders (mutual companies) share their surpluses with their owners through dividend distributions. The level of dividends depends on ownership's expectations of surpluses.

Reinsurance

Medical malpractice insurance carriers protect themselves from the financial risk of severe medical malpractice claims by purchasing reinsurance. This will vary based upon the availability of reinsurance and the risk of the reinsured coverage.

Investment Returns

Medical malpractice insurers depend on investment earnings on claims reserves to pay future claims. When investment returns are expected to decrease, the company needs to collect more in premium to attain an adequate level to pay future claims.

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[23] **Best's Aggregates & Averages**, Property/Casualty, United States & Canada, 2008 Edition, comparing earned premium and losses plus defense expenses net of reinsurance on p.361 and direct earned premium and losses plus defense expenses on p. 363.

[24] National Practitioner Data Bank 2006 Annual Report, Table 13, Mean and Median Medical Malpractice Payment and Mean and Median Delay Between Incident and Payment by State, 2006 and Cumulative Through 2006 - Physicians, p.74.

Risk Classifications

Carriers develop different risk classes and rates for medical specialties based on prior and expected loss experience. The classifications of risk must be reasonable and developed based on sound actuarial principles.

Massachusetts Premiums Change in the 2000s

Based upon the rate history of Medical Professional Mutual Insurance Company (part of the ProMutual Insurance Group), rates rose quickly in the early 2000s. Between 2000 and 2004, ProMutual's physician and surgeon average rates increased each year by at least 9.0% over the previous year's rates. After 2004, ProMutual's rates were much more stable. (Figure 12)

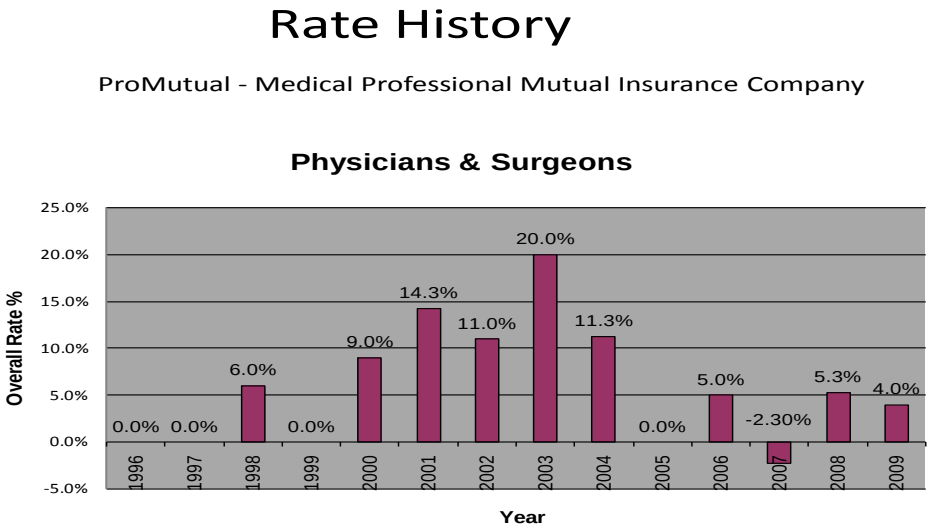

Figure 12

According to the National Practitioner Data Bank, the annual number of medical malpractice claims that were paid for Massachusetts physicians increased from 227 in 2002 to 273 in 2007; this is an increase of 46 claims above what was reported for 2002.[25]

Regarding the size of paid claims (the severity of claims), Massachusetts continues to have high average payouts compared to that of other states. In 2006, the average Massachusetts medical malpractice payment made on behalf of practitioners was $465,236; the median payment was $300,000. When examining claim payments made over the sixteen years between September 1, 1990 and December 31, 2006,

[25] The National Practitioner Data Bank (NPDB) of the federal Health and Human Services agency maintains statistics of medical malpractice claim payments made by state. The noted statistics were taken from Table 11 from the NPDB 2006 Annual Report, p.72.

Massachusetts' median payment was the second highest nationally, only behind that of the state of Illinois. (Figure 13)

NPDB 2006 Annual Report

Table 13: Mean and Median Medical Malpractice Payment and Mean and Median Delay Between Incident and Payment by State, 2006 and Cumulative Through 2006 - Physicians*
National Practitioner Data Bank (September 1, 1990 - December 31, 2006)

	Payment Amounts						Delay Between Incident and Payments			
	2006 Only			Cumulative through 2006			2006 Only	2006 Only	Cumulative through 2006	
State	Mean Payment	Median Payment	Rank of 2006 Median Payment***	Mean Payment	Median Payment	Rank of Cumulative Median Payment***	Mean Delay Between Incident and Payment (Years)	Median Delay Between Incident and Payment (Years)	Mean Delay Between Incident and Payment (Years)	Median Delay Between Incident and Payment (Years)
Alabama	$453,665	$149,900	33	$354,269	$150,000	7	4.47	4.12	4.30	4.00
Alaska	$240,511	$66,667	50	$251,950	$100,000	23	7.83	4.30	4.20	3.61
Arizona	$286,898	$161,375	28	$244,489	$120,000	21	4.11	3.86	3.87	3.39
Arkansas	$246,959	$87,500	46	$208,024	$100,000	23	4.01	3.45	3.57	3.17
California	$223,039	$75,000	48	$144,426	$50,000	51	3.30	2.76	3.32	2.77
Colorado	$312,138	$107,500	42	$204,758	$75,000	45	3.55	3.36	3.45	3.05
Connecticut	$500,289	$333,333	2	$402,000	$180,000	5	5.40	5.17	5.42	5.27
Delaware	$521,177	$250,000	6	$292,240	$125,000	17	4.17	3.82	4.42	4.08
District of Columbia	$331,628	$137,500	35	$392,983	$200,000	2	4.83	4.56	4.72	4.08
Florida**	$240,363	$150,000	29	$232,861	$150,000	7	4.22	3.89	4.00	3.52
Georgia	$292,902	$200,000	12	$305,797	$150,000	7	4.36	3.96	3.81	3.43
Hawaii	$342,316	$250,000	6	$303,571	$100,000	23	4.29	3.98	4.03	3.82
Idaho	$281,751	$200,000	12	$222,406	$75,000	45	3.69	3.50	3.70	3.27
Illinois	$619,205	$400,000	1	$366,004	$205,000	1	5.82	5.35	5.70	5.15
Indiana**	$322,822	$130,339	36	$186,946	$75,001	44	6.38	5.96	5.63	5.27
Iowa	$274,281	$125,000	38	$201,015	$82,500	40	4.08	3.47	3.36	3.13
Kansas**	$155,285	$125,000	38	$161,656	$120,000	21	3.90	3.56	3.96	3.35
Kentucky	$280,599	$147,250	34	$195,284	$80,000	41	5.10	4.55	4.21	3.55
Louisiana**	$207,878	$100,000	44	$151,983	$93,000	35	5.76	5.10	5.24	4.70
Maine	$322,325	$240,000	10	$266,548	$150,000	7	4.41	4.27	4.11	3.74
Maryland	$347,477	$200,000	12	$275,781	$150,000	7	4.72	4.16	4.57	4.17
Massachusetts	$465,236	$300,000	3	$337,574	$200,000	2	6.60	6.50	5.98	5.70
Michigan	$138,433	$85,000	47	$109,004	$75,000	45	4.36	3.98	4.33	3.65
Minnesota	$480,822	$225,000	11	$228,703	$85,000	39	3.53	3.25	3.24	2.86
Mississippi	$258,806	$175,000	24	$218,855	$100,000	23	4.84	4.31	4.25	3.66
Missouri	$330,115	$200,000	12	$234,861	$125,000	17	4.57	4.30	4.46	3.90
Montana	$320,849	$190,000	21	$187,697	$75,000	45	4.43	4.07	4.21	3.70
Nebraska**	$213,081	$200,000	12	$139,798	$90,000	36	4.67	3.64	4.11	3.81
Nevada	$340,211	$187,500	22	$277,211	$130,000	16	4.91	4.75	4.55	4.30
New Hampshire	$336,032	$300,000	3	$270,550	$152,487	6	4.66	4.81	4.70	4.16
New Jersey	$401,144	$242,250	9	$289,726	$150,000	7	5.82	4.97	6.06	5.10
New Mexico**	$199,917	$170,000	25	$157,429	$100,000	23	3.70	3.45	3.80	3.37
New York	$405,558	$250,000	6	$300,521	$150,000	7	5.79	5.18	6.65	5.76
North Carolina	$366,966	$200,000	12	$275,486	$125,000	17	4.29	3.90	3.89	3.52
North Dakota	$301,422	$200,000	12	$204,117	$88,750	38	4.00	3.18	3.44	3.20
Ohio	$310,573	$170,000	25	$249,497	$100,000	23	5.45	4.16	4.35	3.55
Oklahoma	$245,127	$150,000	29	$252,800	$98,250	34	4.13	3.90	3.96	3.45
Oregon	$305,725	$120,000	41	$230,037	$100,000	23	3.47	3.38	3.42	3.07
Pennsylvania**	$332,376	$300,000	3	$249,721	$200,000	2	5.77	5.01	5.89	5.41
Rhode Island	$326,542	$200,000	12	$280,190	$125,000	17	5.95	6.21	6.16	5.88
South Carolina**	$174,454	$100,000	44	$191,770	$100,000	23	4.70	4.40	4.60	4.19
South Dakota	$422,033	$75,000	48	$230,816	$75,053	43	3.26	3.39	3.58	3.23
Tennessee	$317,305	$150,000	29	$230,239	$100,000	23	4.36	3.81	3.77	3.29
Texas	$175,644	$121,009	40	$194,530	$100,000	23	4.05	3.60	3.82	3.40
Utah	$247,349	$165,000	27	$161,591	$55,000	50	4.34	3.87	3.66	3.32
Vermont	$125,795	$26,000	51	$148,462	$75,000	45	3.98	3.65	4.30	4.03
Virginia	$295,840	$200,000	12	$224,964	$132,361	15	3.94	3.52	3.82	3.28
Washington	$277,493	$130,000	37	$225,113	$90,000	36	4.31	4.03	4.25	3.68
West Virginia	$204,794	$105,000	43	$219,180	$100,000	23	5.09	4.32	5.30	4.15
Wisconsin**	$524,041	$177,500	23	$340,051	$150,000	7	4.41	4.44	4.74	4.19
Wyoming	$413,553	$150,000	29	$191,211	$80,000	41	3.33	3.03	3.26	3.02
All Jurisdictions****	$311,965	$175,000		$234,289	$104,167		4.88	4.34	4.75	4.05

This table includes only disclosable reports in the NPDB as of the end of the current year. Voided reports have been excluded.

* The "Physicians" category includes allopathic (M.D.) physicians, allopathic interns and residents, osteopathic (D.O.) physicians, and osteopathic interns and residents.

**These data are not adjusted for payments by State compensation funds and other similar funds. Mean and median payments for States with payments made by these funds understate the actual mean and median amounts received by claimants. Payments made by these funds may also affect mean and median delay times between incidents and payments. States with these funds are marked with two asterisks.

***One denotes the largest median payment; 51 denotes the lowest median payment.

****The total includes reports for American Samoa, Guam, Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands, and Armed Forces locations overseas (214 reports in 2006, and 2,673 reports cumulatively for payment amount and 214 reports for 2006 and 2,618 reports cumulatively for delay between incident and payment).

Figure 13[26]

[26] Figure 13 from the NPDB 2006 Annual Report

Premiums Compared to Those of Other States

ProMutual submitted materials to supplement testimony it presented at the October 3, 2008 hearing presenting the rates the company charges by physician specialty in six Northeast states.[27] The rates that the company charges in Massachusetts and Connecticut are among the highest of the six states, but not for every specialty. (Figure 14)

PROMUTUAL GROUP'S MATURE RATES BY CLASS AS OF 11/01/08 FOR CLAIMS MADE POLICIES *
25 HIGHEST MASSACHUSETTS COMPARED TO RATES IN OTHER NORTHEAST STATES

		Massachusetts	Connecticut	Rhode Island	N. Hampshire	New Jersey	PA-Territory 4
Class	Description	Effective 7/1/2008	Effective 12/1/2008	Effective 9/1/2008	Effective 10/1/2008	Effective 12/1/2008	Effective 7/1/2008
80152	Neurology - incl children, major surgery	108,293	109,897	87,905	89,325	89,468	88,710
80153	OB, gynecology, major surgery	104,481	121,696	97,639	60,653	104,928	93,636
80168	OB, major surgery	104,481	121,696	97,639	60,653	104,928	93,636
80154	Orthopedic incl. spinal, major surgery	86,055	90,207	64,056	51,831	67,114	66,545
80146	Vascular, major surgery	53,537	62,597	54,311	45,215	54,911	54,446
80150	Cardiovascular disease, major surgery	53,537	62,597	66,601	45,215	51,543	51,107
80170	Head & neck, major surgery	53,537	62,597	40,264	39,700	51,543	51,107
80171	Traumatic, major surgery	53,537	62,597	N/A	45,215	51,543	51,107
80354	Orthopedic excl. spinal, major surgery	48,539	75,301	51,266	39,700	54,911	54,446
80141	Cardiac, major surgery	43,643	46,772	N/A	45,215	51,543	51,107
80143	General (NOC), major surgery	43,643	75,301	38,932	37,494	51,543	51,107
80144	Thoracic, major surgery	43,643	62,597	40,264	45,215	54,911	54,446
80155	Plastic - otorhinolaryngology, major surg.	43,643	62,597	54,311	37,494	51,543	51,107
80156	Plastic (NOC), major surgery	43,643	62,597	54,311	37,494	51,543	51,107
80157	Emergency med, incl major surg (brd cert)	43,643	46,772	N/A	39,700	36,717	36,406
80166	Abdominal, major surgery	43,643	46,772	N/A	37,494	51,543	51,107
80167	Gynecology, major surgery	43,643	46,772	38,932	39,700	51,543	51,107
80169	Hand, major surgery	43,643	46,772	36,885	37,494	51,543	51,107
80184	Bariatric, major surgery	43,643	75,301	38,932	37,494	51,543	51,107
80465	Emergency med, inc major surg (no brd cert)	43,643	46,772	N/A	N/A	36,717	36,406
80102	Emergency med, no major surg (brd cert)	29,969	31,067	26,640	16,030	28,018	28,614
80464	Emergency med, no major surg (no brd cert)	29,969	31,067	N/A	16,030	28,018	28,614
80101	Bronco-Esophagology, major surgery	29,042	33,706	N/A	26,466	22,855	22,661
80103	Endocrinology, major surgery	29,042	33,706	N/A	26,466	17,205	17,060
80104	Gastroenterology, major surgery	29,042	33,706	N/A	18,748	22,855	22,661

* ProMutual mature rates in a claims made policy are for those doctors who have been covered under the claims made policy for five or more years.

Figure 14

Among the specialty groups, Massachusetts' average rates for the obstetrician rating classes (80153 and 80168) are $104,481; this is similar to five other states, but over $40,000 more than charged in New Hampshire. For the related "gynecology" only rating class (80167), Massachusetts' average rates are $43,643; this is relatively similar to that of the other states.

[27] Rates presented by ProMutual that are being charged across six Northeast states for the same level of claims-made coverage. The presented chart is for the 25 highest rated specialty classes in Massachusetts.

Conclusion

While medical malpractice premiums have been relatively stable over the past four years, many health care professionals consider them to be too high and too prone to increase. While medical malpractice premiums can change for many reasons, Massachusetts' relative high cost compared to that of other states appears to be tied to the cost of higher medical malpractice claims.

The Division's 2007 report analyzed different reasons that medical malpractice costs may be high and proposed ideas to reform the tort or medical systems; they are not addressed in this report. Since projected trends in malpractice claims have a great impact on cost, the 2007 report looked at ways to address the frequency (number) and severity (size) of medical malpractice claims by looking at the following types of changes:

- Improving communications between patients and health care professionals to improve trust, reduce unreasonable expectations and avoid lawsuits;
- Shifting malpractice risk from individuals to enterprises - *e.g.*, hospitals and health plans - because systems problems are responsible for many medical errors;
- Changing the tort system - *e.g.*, limiting medical malpractice awards and establishing new procedural tort standards - to reduce unnecessary lawsuits and lower the cost of those that remain; and
- Preventing medical errors - *e.g.*, disclosing all medical errors and establishing medical standards of care - to reduce patient injuries.

The 2007 report also identified that certain specialties (*e.g.*, *obst*etrics and gynecology) have higher claims and higher premiums than other specialties and identified that there may be ways to temper these specialties' premiums by looking at the following changes:

- Increasing other providers' premiums to subsidize high-risk providers' premiums;
- Assessing other insurers to subsidize high-cost providers' premiums; and
- Establishing limited no-fault systems to review claims for high-cost providers.

Although the Division did not conduct the same analysis for this the 2008 report, it does believe that the analysis remains valid for the existing medical malpractice market.

Appendix A-1: Medical Malpractice Insurance Companies

The following list identifies the admitted insurance companies that reported Massachusetts premium revenue for medical malpractice coverage during 2008:[28]

Company Name	Domicile
ACE American Insurance Company	PA
American Alternative Insurance Corporation	DE
American Casualty Company of Reading, Pennsylvania	PA
American Home Assurance Company	NY
American Insurance Company	OH
Chicago Insurance Company	IL
Church Mutual Insurance Company	WI
Cincinnati Insurance Company	OH
Connecticut Medical Insurance Company	CT
Continental Casualty Company	IL
Darwin National Insurance Company	DE
(The) Doctors' Company	CA
Fortress Insurance Company	IL
General Insurance Company of America	WA
Granite State Insurance Company	PA
Medical Professional Mutual Insurance Company	MA
Medical Protective Company	IN
National Casualty Company	WI
National Union Fire Insurance Company of Pittsburgh, PA	PA
NCMIC Insurance Company	IA
OneBeacon Insurance Company	PA
Pharmacists Mutual Insurance Company	IA
Platte River Insurance Company	NE
Podiatry Insurance Company of America (Mutual Company)	IL
Professional Solutions Insurance Company	IA
ProSelect Insurance Company	MA
State Farm Fire and Casualty Company	IL

[28] According to materials reported to the National Association of Insurance Commissioners

Appendix A-2: Medical Malpractice Surplus Lines Carriers

The following list identifies the surplus lines carriers that reported Massachusetts premium revenue for medical malpractice coverage during 2008:[29]

Admiral Insurance Company	DE
Allied World Assurance Company (U.S.), Inc.	DE
American Intl. Specialty Lines Insurance Company	IL
Arch Specialty Insurance Company	NE
Aspen Specialty Insurance Company	ND
Chubb Custom Insurance Company	DE
Columbia Casualty Company	IL
Darwin Select Insurance Company	AR
Essex Insurance Company	DE
Evanston Insurance Company	IL
General Star Insurance Company	CT
Homeland Insurance Company of New York	NY
Houston Casualty Company	TX
Illinois Union Insurance Company	IL
Interstate Fire and Casualty Company	IL
Ironshore Specialty Insurance Company	AZ
James River Insurance Company	OH
Landmark American Insurance Company	OK
Lexington Insurance Company	DE
Liberty Surplus Insurance Corporation	NH
ProNational Insurance Company	MI
Steadfast Insurance Company	DE
United Specialty Insurance Company	DE
Western World Insurance Company, Inc.	NH

[29] According to materials reported to the National Association of Insurance Commissioners.

Appendix A-3: Medical Malpractice Risk Retention Groups

In Massachusetts, the following Risk Retention Groups (RRGs) reported Massachusetts premium revenue for medical malpractice coverage during 2008:[30]

Company Name	**Domicile**
Allied Professionals Insurance Co. (RRG)	AZ
American Association of Orthodontists Insurance Co. (RRG)	VT
American Excess Insurance Exchange (RRG)	VT
Controlled Risk Insurance Co. of VT, Inc. (RRG) [aka, CRICO]	VT
Eastern Dentists Insurance Co. (RRG)	VT
Green Hills Insurance Co. (RRG)	VT
Healthcare Industry Liability Reciprocal Co. (RRG)	DC
OMS National Insurance Co. (RRG)	IL
Ophthalmic Mutual Insurance Co. (RRG)	VT
Preferred Physicians Medical RRG, Inc.	MO

[30] According to materials reported to the National Association of Insurance Commissioners.

We Can Help!

The Division of Insurance exists to serve the citizens of the Commonwealth of Massachusetts. The Division responds to inquiries and assists consumers in resolving complaints against insurers, producers and other licensees. In addition to providing consumers with general insurance information in the form of brochures, guides and web content, the Division also advises consumers on their options and rights under their policies, state laws and insurance regulations.

If you have a complaint against an insurance company, we recommend that you contact the insurance company first and try to settle the matter. Most insurance companies have policyholder service offices to handle questions. If you are still not satisfied, you may contact the Division's Consumer Service Section staff to help with the problem. Although we cannot represent a consumer legally against an insurance company or adjuster, we can make an appropriate investigation into potential violation of insurance laws or regulations based on a complaint.

If you wish to file a formal complaint against an insurance company or producer, you can obtain a blank consumer complaint form by calling the Division's Consumer Service Section Hotline at 617-521-7794. Alternatively, you can download a blank complaint form from the Division's web site at www.mass.gov/doi. Contact the Division with any question you may have concerning an insurance company or product.