



**Massachusetts Division of Insurance  
Medical Malpractice Insurance Report  
For the 2012 Calendar Year**

Joseph G. Murphy  
Commissioner of Insurance

## Acknowledgements

This report was prepared by the State Rating Bureau staff of the Massachusetts Division of Insurance (“Division”). Matthew M. Mancini, State Rating Bureau Director, Gerald B. Condon, State Rating Bureau Researcher, Cara Blank, State Rating Bureau, Property Casualty Actuary, and Daniel M. D’Amico, State Rating Bureau Research Analyst, prepared the report and provided the analysis.

The Division relies on insurance companies, the National Association of Insurance Commissioners, and other regulatory agencies for the accuracy of all reported financial 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<sup>1</sup> and that insurance companies make medical malpractice coverage available on an equal basis, under the “take all comers” statute to all doctors and certain other licensed healthcare providers willing to pay for it.<sup>2</sup> Some providers have indicated that the cost of coverage is forcing them to consider dropping their practices or moving to other states to practice.

Massachusetts medical malpractice insurance can be obtained through licensed insurers, risk retention groups and surplus lines insurers. Medical malpractice insurers that are licensed in Massachusetts and provide coverage to certain medical practitioners may not refuse to provide coverage for any such medical practitioner. In contrast, surplus lines insurers and risk retention groups may refuse to provide medical malpractice coverage to certain medical providers based on the insurer’s underwriting standards.

Trends observed for the medical malpractice market through 2012 include the following:

- Total medical malpractice insurance premiums decreased approximately 0.2% to \$307.5 million in 2012 from \$314.0 million in 2011.
- Licensed insurers continue to provide the majority of medical malpractice insurance in Massachusetts, but their share of the market compared to that offered by surplus lines carriers and risk retention groups decreased to 52.5% since 2011.
- Approximately three-fourths of the medical malpractice insurance market continues to be underwritten by two companies – Coverys (formerly known as ProMutual or as the Massachusetts JUA) and the Controlled Risk Insurance Company of Vermont (CRICO). CRICO is a risk retention group created to insure the physicians and employees of Harvard-affiliated medical institutions and writes approximately 41% of the medical malpractice insurance in Massachusetts.
- The financial strength of licensed insurance companies continues to improve in Massachusetts without significant rate activity. Coverys did not change its rates for physicians and surgeons in 2012.

While pressure on rates recently has eased, Massachusetts continues to have higher medical malpractice claim payments than other states. Between 2002 and 2011, the Massachusetts median malpractice claim payment for physicians was the second highest nationally.

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<sup>1</sup> 243 CMR 2.07(16).

<sup>2</sup> M.G.L. c .175, §193U.

## Massachusetts Health Care Professionals

### Number of Professionals

For 2012, there were approximately 265,500 individual health care professionals licensed by state agencies to practice in the following categories:<sup>3</sup>

145,186	Nurses
23,007	Social Workers
33,862	Medical and Osteopathic Doctors
21,834	Allied Health Providers (Therapists, Assistants and Athletic Trainers)
7,191	Dentists
7,079	Allied Mental Health Providers
5,606	Psychologists
6,751	Audiologists, Speech Pathologists and Assistants
2,969	Respiratory Care Specialists
2,170	Chiropractors
2,295	Dietitians/Nutritionists
1,402	Dispensing Opticians
2,589	Physician Assistants
1,589	Optometrists
1,051	Acupuncturists
555	Podiatrists
173	Hearing Instrument Specialists
106	Certified Health Officers
98	Perfusionists

In addition to the above-noted individual professionals, approximately 1,700 facilities and programs were licensed to operate as the following types of entities:<sup>4</sup>

511	Nursing Homes/Rest Homes
302	Clinics
178	Home Health Care Agencies
189	Mammography Facilities
137	Hospitals (acute care and non-acute)
325	Ambulance services
74	Hospices

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

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<sup>3</sup> Numbers of current licensed health care professionals as reported to the Division of Insurance by the following agencies: Massachusetts Board of Registration in Medicine for active board licensed medical and osteopathic doctors; 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 current licensed health care professionals; the number actively practicing in a profession may be smaller than the number reported.

<sup>4</sup> Numbers of licensed facilities and programs, not including satellites, 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.

## Medical Malpractice Insurance in the Massachusetts Market

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Medicine,<sup>5</sup> the Division of Professional Licensure,<sup>6</sup> Boards of Registration,<sup>7</sup> the Department of Mental Health<sup>8</sup> or the Department of Public Health.<sup>9</sup> 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 in order to practice in a hospital or to be included in a health plan network.

### **Liability Coverage Requirements**

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

In Massachusetts, if an insurance company offers medical malpractice coverage to health care professionals or facilities included in certain statutorily identified categories, the insurance company must provide coverage to any other practitioner or facility in that category. The statutory categories include<sup>10</sup>:

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

Health care professionals outside the statutorily defined categories may apply for coverage with insurance companies, but a company has the right to decline to provide coverage for non-protected categories.

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<sup>5</sup> The Board of Registration in Medicine coordinates the licensing of doctors (MDs and DOs) and acupuncturists.

<sup>6</sup> 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.

<sup>7</sup> 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.

<sup>8</sup> The Department of Mental Health licenses private mental health hospitals and clinics.

<sup>9</sup> 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.

<sup>10</sup> M.G.L. c. 175, §193U. The Commissioner of Insurance also may designate other categories when they are 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.

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<sup>11</sup> and that chiropractors maintain coverage of at least \$500,000 per claim and \$1 million per year.<sup>12</sup> 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 insurers for certain losses.<sup>13</sup>

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 subsequently switched to “claims-made” policies (covering only claims filed during a coverage year.)<sup>14</sup> Since losses under claims-made policies are more predictable, the new products enabled companies to more accurately determine their liabilities and stabilize their rating practices.<sup>15</sup>

In 1994, Massachusetts passed legislation to transform the MMJUA into the Medical Professional Mutual Insurance Company (now known as “Coverys”) with a board composed mainly of practicing or retired healthcare providers.<sup>16</sup> Since its inception, Coverys has been one of the largest medical malpractice insurance providers in Massachusetts.

### Licensed Insurance Companies

Medical malpractice insurance companies may be licensed by the Division of Insurance with a designation of 6F - liability other than auto for “medical malpractice”. These insurers are required to participate in the state’s guaranty fund for property and casualty writers, which provides some protection to policyholders in the event of an insurer’s

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<sup>11</sup> 243 CMR 2.07(16).

<sup>12</sup> 233 CMR 4.04.

<sup>13</sup> Section 6 of Chapter 362 of the Acts of 1975.

<sup>14</sup> “Medical Malpractice: Implication of Rising Premiums on Access to Health Care,” General Accounting Office, August 2003, p. 10.

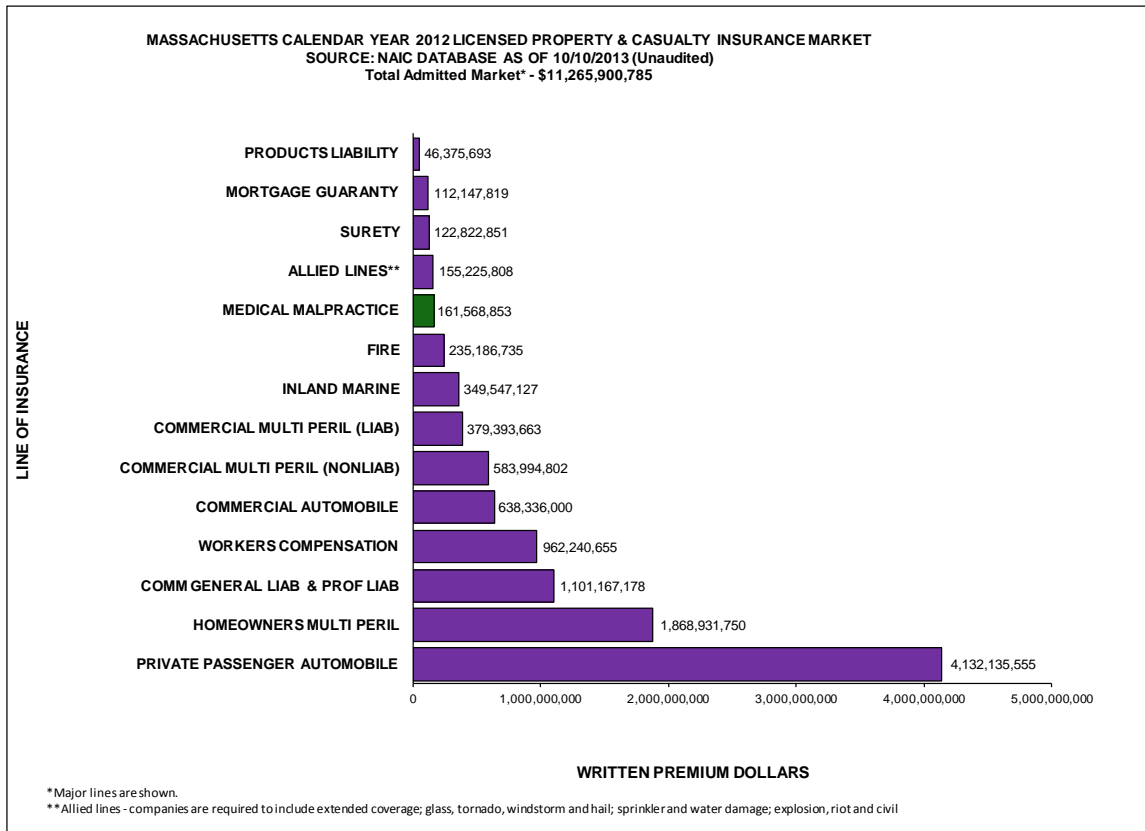
<sup>15</sup> In Massachusetts, only one company – the MMJUA’s successor - is required to offer both “occurrence-based” and “claims-made” coverage, while other companies have switched to “claims-made” policies.

<sup>16</sup> 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.



## Medical Malpractice Insurance in the Massachusetts Market

insolvency. In 2012, licensed medical malpractice insurance companies wrote \$161.6 million in direct written premium; this is about 1.4% of the premium written for all property and casualty coverage. (Figure 1)

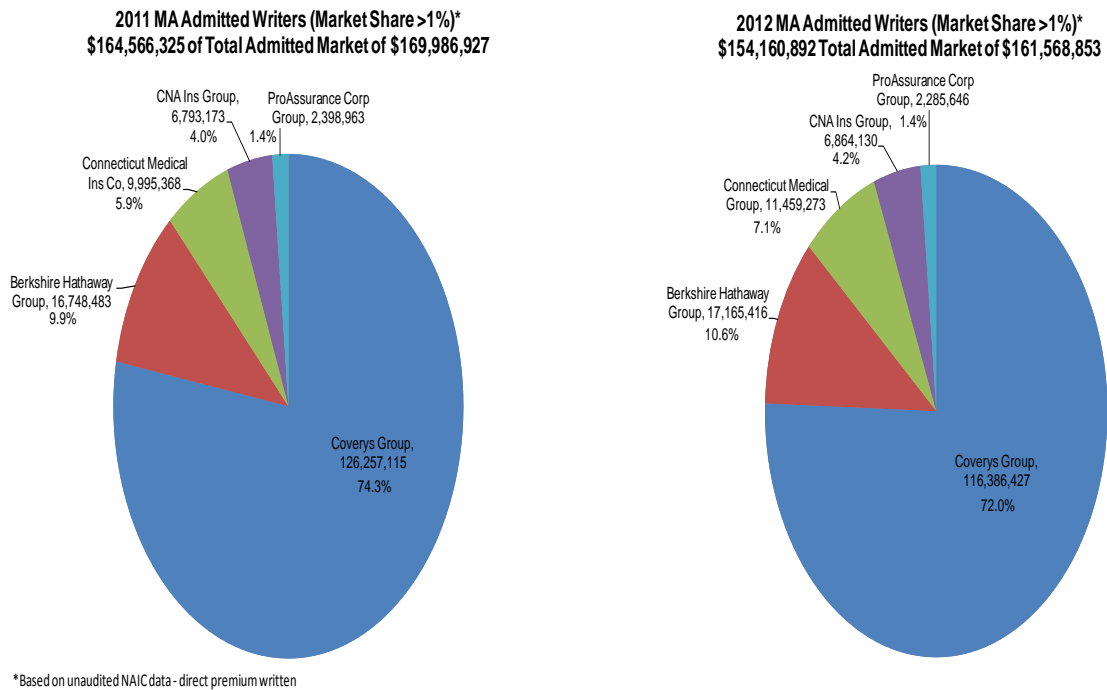


**Figure 1**

The Division of Insurance maintains a list of medical malpractice insurance companies on its website<sup>17</sup> 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 2012 is in Appendix A-1.

<sup>17</sup> The Division’s website indicates the companies that write each of the designated classes of providers  
<http://www.mass.gov/ocabr/business/insurance/commercial-buyers/medical-malpractice-insurance/>

## Medical Malpractice Insurance in the Massachusetts Market



**Figure 2**

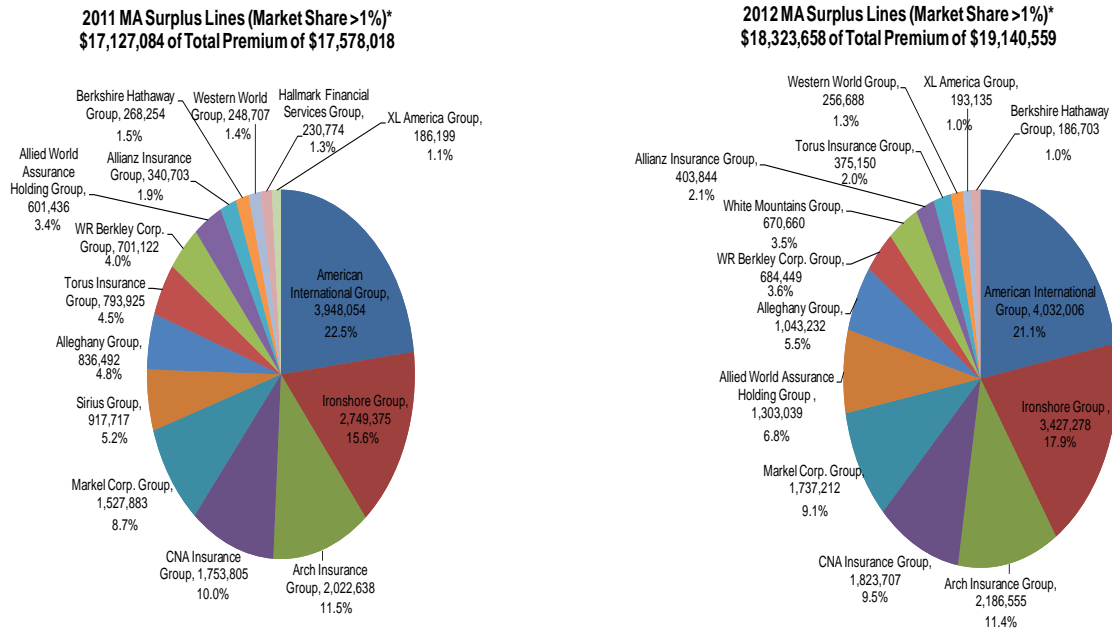
As noted in Figure 2, the Coverys Group – composed of Medical Professional Mutual Insurance Company and ProSelect Insurance Company – covered the predominant share of the 2012 medical malpractice insurance policies, collecting approximately 72.0% of total insurance premium. This is a decrease from its 74.3% market share of the market in 2011.

### Surplus Lines Carriers

In addition to licensed insurance companies, health care professionals also may turn to surplus lines carriers for medical malpractice coverage. Surplus lines carriers are not licensed as insurers in Massachusetts, but are licensed in another jurisdiction and can issue coverage, through specially licensed brokers, to those who cannot obtain coverage from those insurers licensed to do business in Massachusetts (often referred to as the “admitted market”). Surplus lines carriers are not subject to Massachusetts insurance laws – such as the “take all comers” requirements - and do not participate in the state’s guaranty fund. The Division of Insurance maintains a list of surplus lines carriers approved to do business in Massachusetts on its website.<sup>18</sup> The list of surplus lines carriers writing medical malpractice coverage in 2012 is in Appendix A-2.

<sup>18</sup> The list is located at <http://www.mass.gov/ocabr/docs/doi/companies/surpluslines.pdf>

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**Figure 3**

The largest medical malpractice carrier in the surplus lines market in 2012 was American International Group (including Lexington Insurance Company), accounting for 21.1% of the 2012 medical malpractice policy premium provided in the surplus lines market. (Figure 3)

### Risk Retention Groups

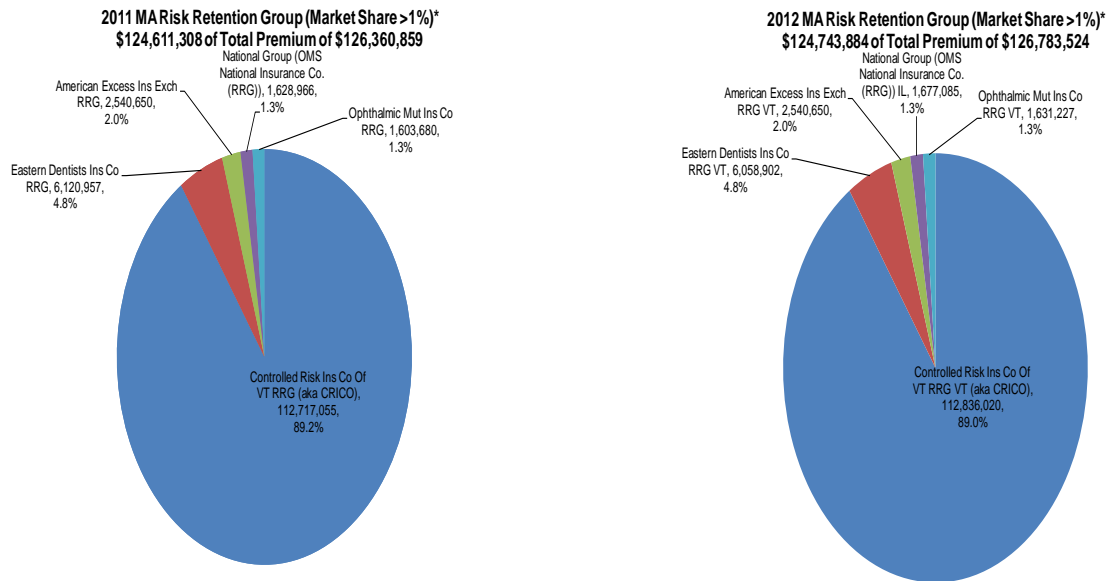
In addition to licensed insurance companies and surplus lines carriers, medical malpractice coverage also may be obtained through risk retention groups (“RRGs”). Under federal law,<sup>19</sup> an RRG may offer liability coverage in any state, provided the RRG is licensed as an insurance company in at 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.

<sup>19</sup> Liability Risk Retention Act of 1986, 15 U.S.C. § 3901, with related M.G.L. c. 176L.

## Medical Malpractice Insurance in the Massachusetts Market



**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 approximately 89.0% of premium in 2011 and 2012. CRICO was created in 1979 to provide professional liability coverage to the physicians and employees of Harvard-affiliated medical institutions.<sup>20</sup> 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.

<sup>20</sup> 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
Harvard Vanguard Medical Associates, Inc.	Spaulding Rehabilitation Hospital
Joslin Diabetes Center, Inc.	

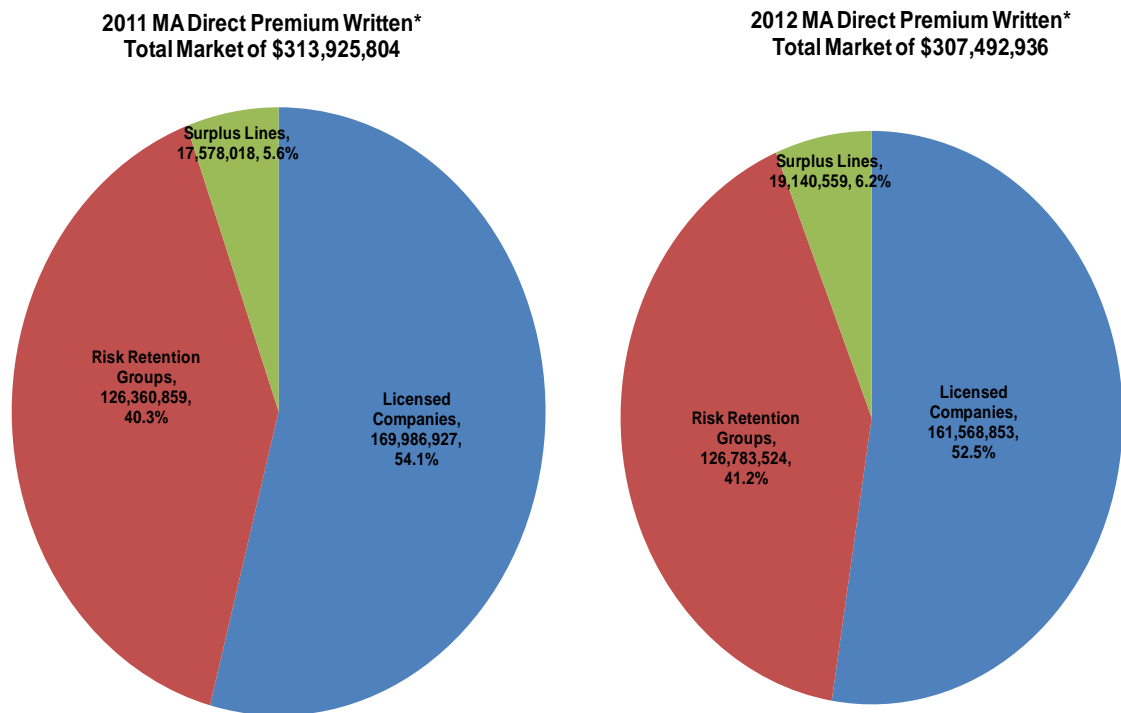
## Medical Malpractice Insurance in the Massachusetts Market

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The four next largest RRGs collectively account for about 9% of the market, and some of them write coverage for specialty providers. The list of RRGs that were writing medical malpractice coverage in 2012 are in Appendix A-3.

### Shares of the Market

During 2012, insurers, surplus lines carriers and RRGs together wrote \$307.5 million of medical malpractice premium, with 52.5% written by insurance companies, 41.2% written by RRGs and 6.2% written by surplus lines carriers. In 2011, insurers, surplus lines carriers and RRGs together wrote \$313.9 million of medical malpractice premium, with 54.1% written by insurance companies, 40.3% written by RRGs and 5.6% written by surplus lines carriers. (Figure 5)



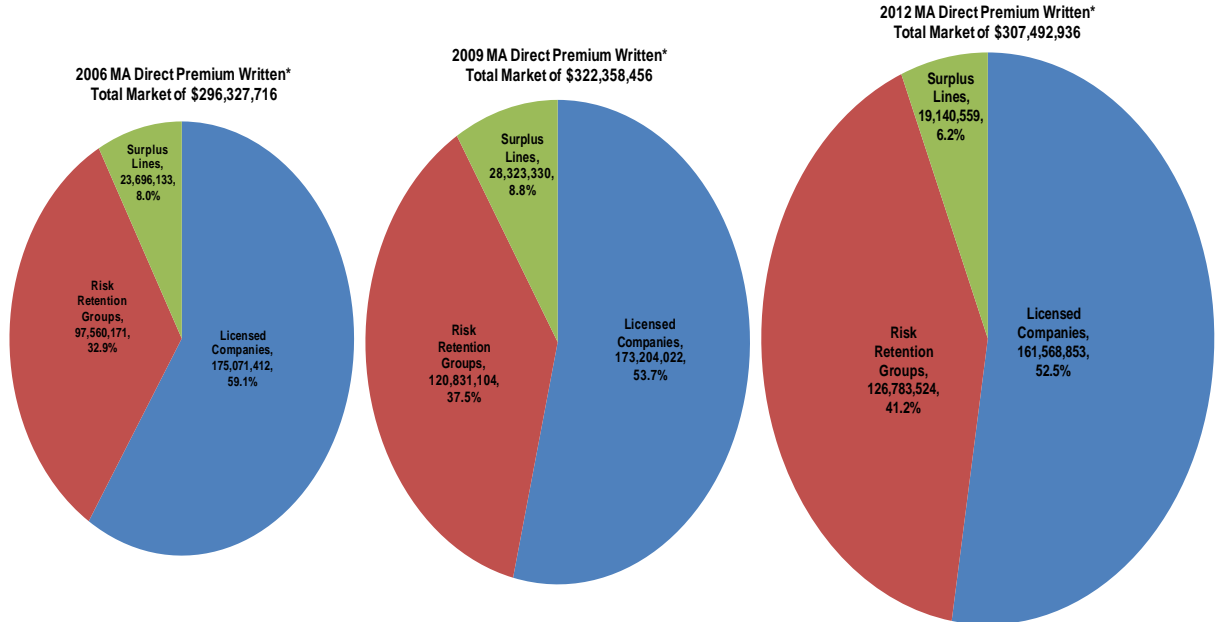
\*Based on unaudited NAIC data - direct premium written

**Figure 5**

## Medical Malpractice Insurance in the Massachusetts Market

In 2006, 59.1% was written by insurance companies, 32.9% was written by RRGs and 8.0% was written by surplus lines carriers. (Figure 6)

### Total Market 2006, 2009, 2012



\*Based on unaudited NAIC data - direct premium written

Figure 6

## Financial Results for Insurance Carriers

### Premiums

Financial results for providers of medical malpractice insurance are calculated based on premiums earned during the calendar year. Between calendar years 2009 and 2012, total earned premium for insurance companies, RRGs and surplus lines carriers combined increased 0.5%, compared with a 7.5% increase in earned premiums between calendar years 2006 and 2009.

The rate of premium change over the period 2006 to 2012 varied considerably by the type of insurance provider. The change in the average annual premium<sup>21</sup> for licensed insurance companies decreased by 0.1%, as compared to increases of 4.5% for RRGs, and decreases of 4.5% for surplus lines insurers. (Figure 7)

<sup>21</sup> Average annual change is calculated as  $(2012 \text{ earned premium} / 2006 \text{ earned premium})^{1/6} - 1.0$  using the premiums shown in Figure 7.

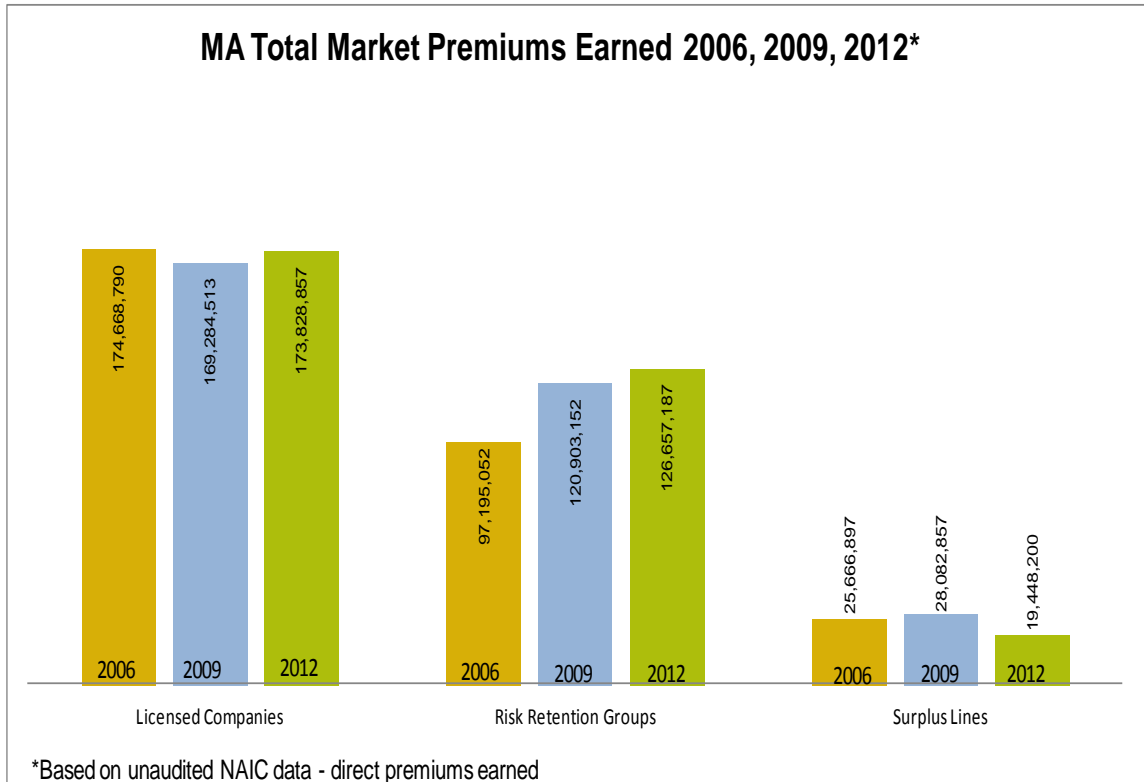


Figure 7

**Claim Costs**

Medical malpractice insurance premiums are based on projected medical malpractice claims costs, as well as the cost to settle or defend claims, general administrative expenses, agent commissions, and reinsurance expenses. Claims dollars are important drivers of overall costs, but examining insurance losses in financial reports may not present an accurate picture of an insurance provider’s financial results. In Massachusetts, medical malpractice claims are resolved an average of six years<sup>22</sup> following a malpractice incident. Insurance losses reported in financial reports may be associated with premiums that were collected six years ago, even though they are compared with premiums that were collected in the past year.

<sup>22</sup> 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.



**Figure 8**

Massachusetts licensed insurance companies reported total claims losses of \$101.5 million in 2006, compared to \$174.9 million collected in earned 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 \$61.1 million 2012 1.1% more than the \$60.4 million in losses incurred in 2009 and 39.8% less than the \$101.5 million in losses incurred in 2006.

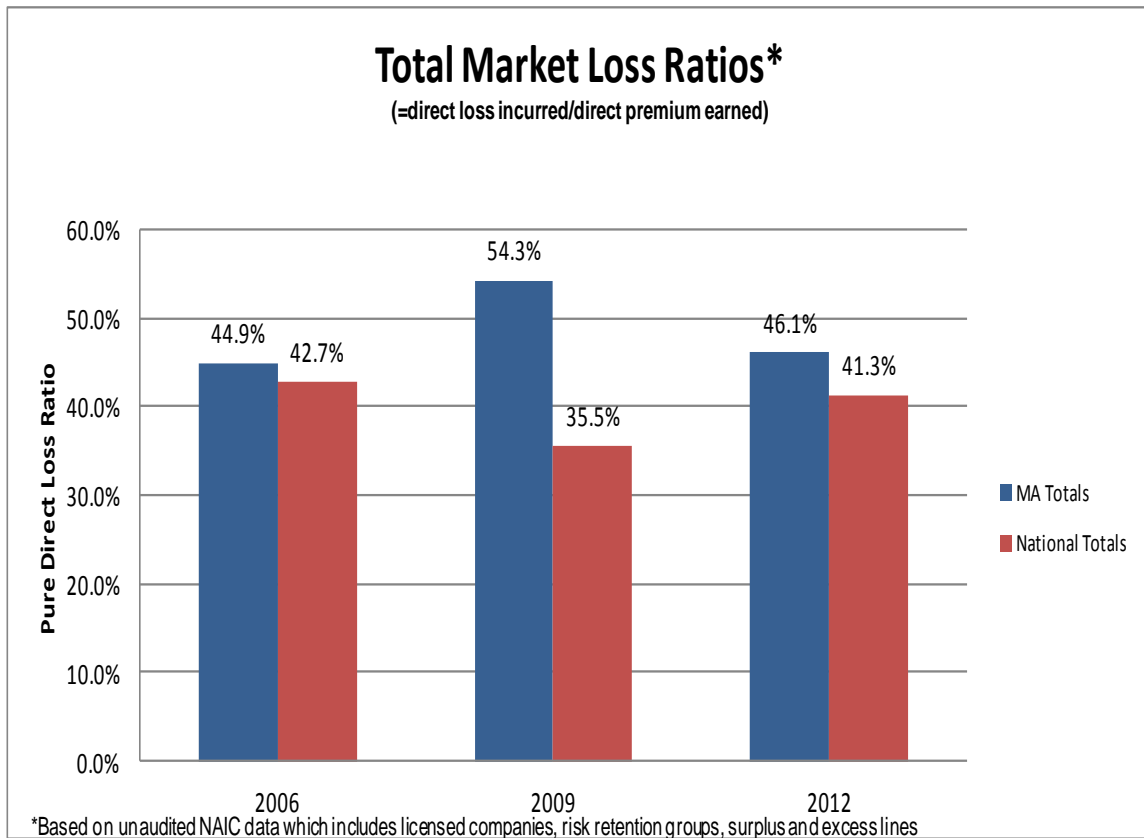
RRGs incurred \$78.5 million in losses in 2012 – 27.6% less than the \$108.5 million incurred in losses in 2009 and 169.5% more than the \$29.1 million incurred in losses in 2006. Surplus lines carriers incurred \$7.8 million in claims losses in 2012 – 95.8% more than the \$4.0 million incurred in losses in 2009 and 172.8% more than the \$2.9 million incurred in losses in 2006. (Figure 8)

**Loss Ratios**

Loss ratios from company financial statements (incurred losses divided by earned premium) reflect the proportion of premium dollars used to pay claims for medical malpractice. Financial statement loss ratios for medical malpractice can vary significantly from one year to the next because of changes in reserves for unpaid or unknown claims.

The calculated loss ratios for Massachusetts medical malpractice companies (licensed insurers, RRGs and surplus lines carriers) increased from 44.9% in 2006 to 46.1% in 2012. The loss ratios on a national basis for all medical malpractice companies declined from 42.7% in 2006 to 41.3% in 2012. (Figure 9)





**Figure 9**

The licensed insurance companies' loss ratios declined from 58.1% in 2006 to 35.1% in 2012. The RRGs' loss ratios increased during this period from 30.0% in 2006 to 62.0% in 2012. The surplus lines carriers' loss ratios increased from 11.2% in 2006 to 40.3% in 2012. (Figure 10)<sup>23</sup>

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<sup>23</sup>Includes losses covered by reinsurance and does not necessarily reflect the loss expense of the primary insurers.

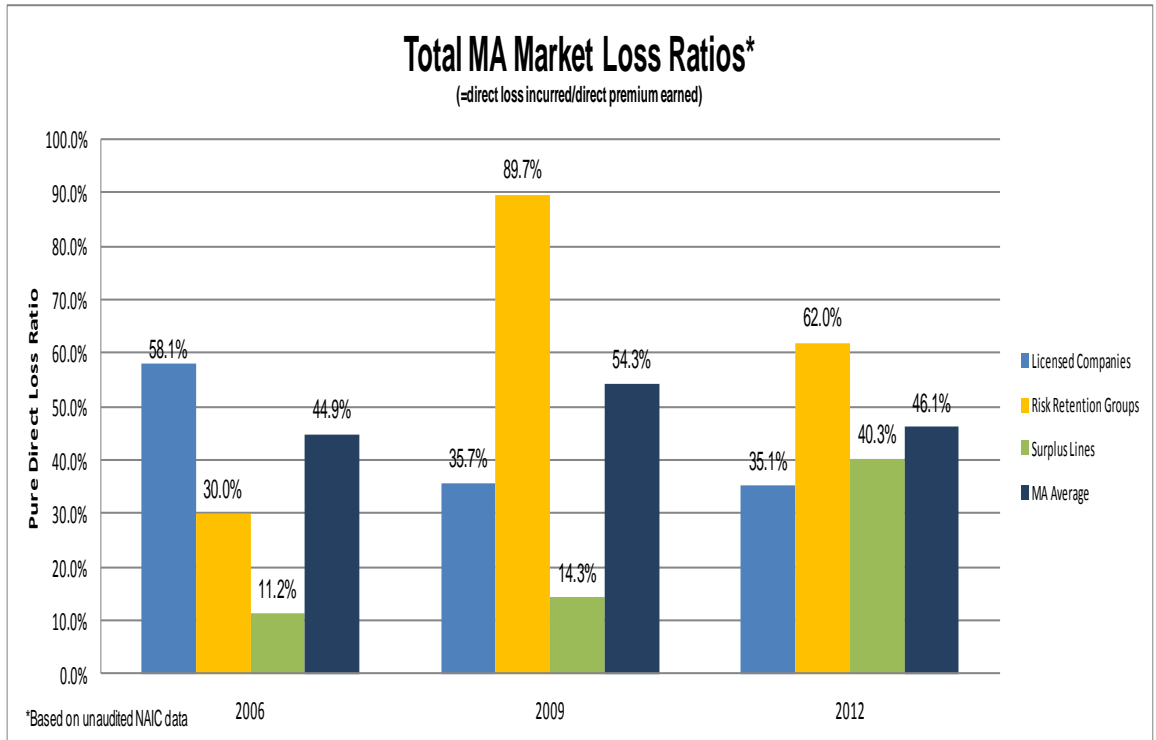


Figure 10

**Profitability**

An operating ratio represents the overall return on an insurer’s investment in providing medical malpractice insurance. The operating ratio reflects the loss ratio of an insurance company, as well as the costs required to run it, including claims handling, commissions to agents, advertising, taxes, and dividends to policyholders. This combined ratio is then reduced by an insurer’s investment returns, as a percentage of premium collected, to produce the operating ratio. If a company’s operating ratio is less than 100%, it has made a profit<sup>24</sup>; when the operating ratio is greater than 100%, it has lost money.

The operating ratio of the medical malpractice insurance industry over time indicates whether the historic experience of the market has returns that reasonably align with expectations. Operating ratios based on historic data are not good indicators of price strength in any given year, but are helpful to understand why prices are moving in a specific direction.

Since medical malpractice loss ratios from financial statements can vary widely from year to year, the Division of Insurance monitors the operating ratios of this industry using five year moving average loss ratios. This adjustment smoothes out these fluctuations, and provides a more accurate picture of claim cost trends in this market. Also, since medical malpractice is considered a “long tailed line” where claim payments may not be made for many years after a claim has occurred or been reported, the investment income earned during this delay contributes significantly to an insurer’s profitability. Because investment

<sup>24</sup>Federal/state income tax and dividends to stockholders are paid out of the profits earned during the year.

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returns can vary widely from year to year, the Division of Insurance similarly monitors the operating ratios of this industry using five-year moving average investment returns.

Figure 11 below displays the “adjusted” operating ratios for all medical malpractice insurers licensed in Massachusetts. Column (G) indicates that the operating returns to medical malpractice insurers are trending towards profitability, and indicates that the market is increasing its financial strength.

Calculation of Adjusted Operating Ratios - Licensed Companies							
	(A)	(B)	(C)	(D)	(E)	(F)	(G)
		5 Year	1 Year	1 Year	1 Year	5 Year Average	Average
Calendar	Earned	Moving Loss	Other	Commission	Dividend	Net Investment	Return on
Year	Premium	Ratio	Expense Ratio	& Premium Tax	Ratio	Income	Premium
2012	\$173,829	54.5%	11.4%	11.6%	5.0%	14.7%	32.2%
2011	\$172,738	61.2%	12.0%	12.0%	5.2%	15.6%	25.1%
2010	\$171,416	73.4%	10.5%	10.9%	4.9%	15.4%	15.7%
2009	\$169,282	77.0%	9.6%	10.6%	4.0%	14.6%	13.4%
2008	\$168,353	83.0%	10.1%	10.6%	4.0%	15.0%	7.3%
2007	\$175,192	88.3%	7.9%	10.5%	1.0%	16.7%	9.0%
(A) NAIC database, licensed companies only							
(B) NAIC database, calendar year direct incurred loss & DCCE adjusted by a factor of 1.065 to reflect other claims adjustment expense							
(C) Bests' Aggregates and Averages for MA licensed companies only							
(D) NAIC database, as percentage of direct written premium							
(E) NAIC database, as percentage of direct written premium							
(F) Bests' Aggregates and Averages for MA licensed companies only							
(G) = 1.0 - (B) - (C) - (D) - (E) + (F)							

**Figure 11**

## Premiums for Medical Malpractice Coverage

Insurance companies develop premiums to pay future expected claims costs and business expenses, while also meeting company profit expectations and staying competitive with other insurance companies. Changes in future expected claim costs, business expenses, and investment returns drive changes in insurers’ rates on a yearly basis. If an insurer’s current rates are adequate to pay all claims and expenses, and provide a reasonable profit, the rates for the next year can be expected to rise by the expected changes in underlying costs.

The Coverys Group is the largest medical malpractice insurer in Massachusetts, writing approximately 37.9% of the total market, and 72.0% of the admitted market. As such, its

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rate history can be used to illustrate the relationship between expected cost increases and changes in rates.

The rate history of Medical Professional Mutual Insurance Company (part of the Coverys Group) illustrates that medical malpractice rates rose quickly in the early 2000s. Between 2000 and 2004, Medical Professional's physician and surgeon average rates increased each year by at least 9.0% over the previous year's rates. After 2004, Medical Professional's rate changes were much more moderate, and less than their projected rate of cost increases of 5% per year. (Figure 12)

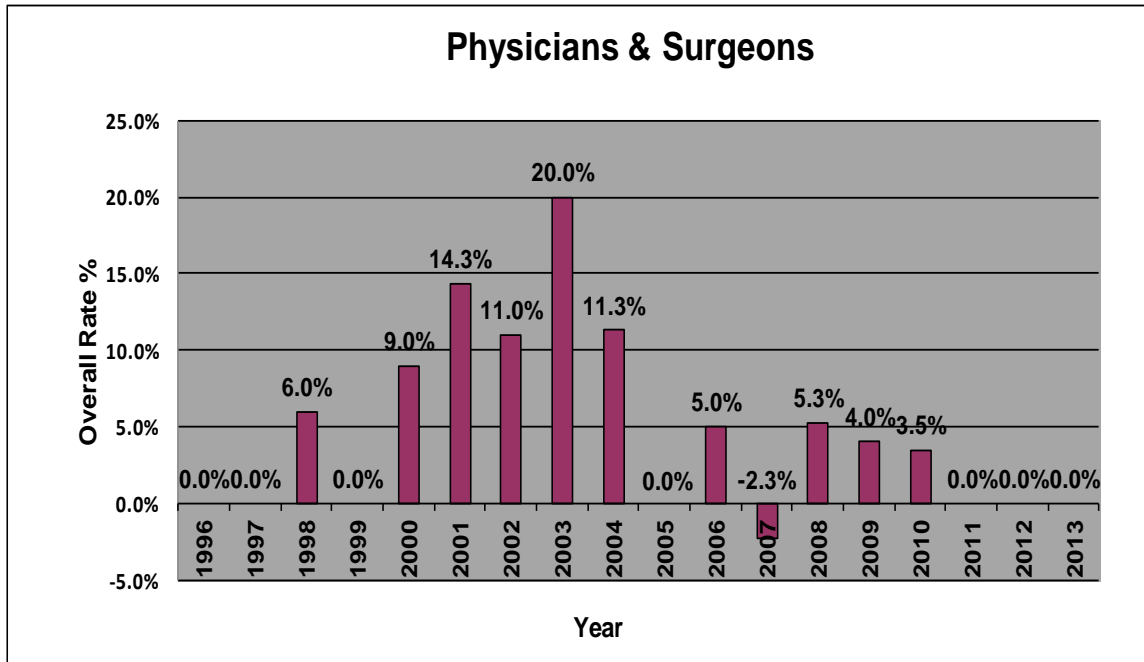


Figure 12

The rate change history of the Medical Professional Mutual Insurance Company supports the expectation that returns have improved, and that, absent any dramatic change in underlying claim costs or investment returns, future rate changes will remain flat or decline from a high in 2003.

### Average Claim Costs for Medical Malpractice Coverage

Regarding the size and type of paid claims, Massachusetts continues to have higher claim payouts than other states. In 2011, the median Massachusetts medical malpractice payment made on behalf of physicians was \$404,000, the highest in the country. When examining claim payments made over the ten years between 2002 and 2011, Massachusetts' median payment was ranked the second highest nationally, only behind that of the state of Illinois. (Figure 13)

## Medical Malpractice Insurance in the Massachusetts Market

### National Practitioner Data Bank 2011 Annual Report

**Table 22: Median Malpractice Payments and Rank by Jurisdiction, Physicians 2002 - 2011**

State	Payment Ranks		Median Payment
	2002-2011	2011	2011
Alabama	11	16	\$200,000
Alaska	23	8	\$275,000
Arizona	13	9	\$253,375
Arkansas	16	22	\$166,667
California	33	36	\$94,167
Colorado	26	24	\$165,000
Connecticut	4	6	\$298,250
Delaware	9	17	\$194,463
District of Columbia	7	21	\$173,750
Florida	14	16	\$200,000
Georgia	11	16	\$200,000
Hawaii	6	11	\$245,000
Idaho	21	12	\$225,000
Illinois	1	2	\$400,000
Indiana	27	30	\$118,501
Iowa	26	34	\$100,000
Kansas	22	27	\$145,000
Kentucky	25	28	\$142,250
Louisiana	30	37	\$90,000
Maine	8	4	\$300,000
Maryland	10	26	\$150,000
Massachusetts	2	1	\$404,000
Michigan	31	31	\$115,000
Minnesota	15	4	\$300,000
Mississippi	23	26	\$150,000
Missouri	11	16	\$200,000
Montana	16	10	\$250,000
Nebraska	23	14	\$212,500
Nevada	19	32	\$112,500
New Hampshire	5	3	\$326,000
New Jersey	5	8	\$275,000
New Mexico	17	19	\$187,500
New York	5	5	\$299,500
North Carolina	16	12	\$225,000
North Dakota	28	20	\$180,000
Ohio	16	18	\$189,250
Oklahoma	23	13	\$215,000
Oregon	23	12	\$225,000
Pennsylvania	3	4	\$300,000

## Medical Malpractice Insurance in the Massachusetts Market

Rhode Island	18	16	\$200,000
South Carolina	30	29	\$135,000
South Dakota	29	38	\$77,500
Tennessee	24	16	\$200,000
Texas	23	33	\$110,000
Utah	23	26	\$150,000
Vermont	32	35	\$94,200
Virginia	9	7	\$295,000
Washington	23	23	\$165,834
West Virginia	26	39	\$75,000
Wisconsin	12	25	\$158,268
Wyoming	20	15	\$210,000

Note: Year is malpractice payment year.

**Figure 13<sup>25</sup>**

Obstetric-related malpractice paid claims, nationally, continue to have highest average claim payouts. In 2011, the average national medical malpractice payment made on behalf of physicians for obstetrics related claims was \$606,809. When examining claim payments made over the ten years from 2002 to 2011 the average national medical malpractice payment made on behalf of physicians for obstetrics related claims was \$541,138. The national median obstetrics related payment was \$373,750 in 2011 and over the ten years from 2002 to 2011 the median payment was \$350,000. Diagnosis related malpractice claim payments ranked the second highest nationally with an average claim payment in 2011 of \$373,957. (Figure 14)

### National Practitioner Data Bank 2011 Annual Report

Payment Reason	Median Payment		Number of Payments		Mean Payment	
	2011	2002-2011	2011	2002-2011	2011	2002-2011
Obstetrics-related	\$373,750	\$350,000	556	9,765	\$606,809	\$541,138
Diagnosis-related	\$250,000	\$212,500	2,596	40,074	\$373,957	\$334,879
Anesthesia-related	\$225,000	\$200,405	254	3,525	\$397,791	\$369,687
IV & Blood Products-related	\$200,000	\$150,035	24	270	\$287,063	\$239,664
Surgery-related	\$171,250	\$150,000	2,444	32,120	\$278,253	\$262,024
Treatment-related	\$150,000	\$150,000	1,783	23,059	\$273,828	\$258,049
Monitoring-related	\$150,000	\$150,000	230	3,094	\$327,343	\$316,716
Medication-related	\$110,000	\$120,000	472	6,119	\$235,100	\$235,659
Other	\$55,000	\$55,000	218	2,325	\$209,102	\$201,147
Behavioral Health-related	\$50,000	\$115,000	17	349	\$183,840	\$231,442
Equipment/Product-related	\$38,000	\$58,750	62	605	\$116,902	\$142,554

Note: Year is malpractice payment year.

**Figure 14**

<sup>25</sup> Figure 13 and Figure 14 are from the National Practitioner Data Bank 2011 Annual Report. The National Practitioner Data Bank 2012 Annual Report was not available at the time of this report.

## Medical Malpractice Insurance in the Massachusetts Market

### Premiums Compared to Those of Other States

Coverys 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.<sup>26</sup> These rates since have been updated to reflect Massachusetts' rates as of October 1, 2013. The rates that the company charges, generally, in Massachusetts and Connecticut are among the highest of the six states, but not for every specialty. (Figure 15)

COVERYS GROUP'S (FORMERLY PROMUTUAL GROUP) MATURE RATES BY CLASS AS OF 10/1/2013 FOR CLAIMS MADE POLICIES*							
25 HIGHEST MASSACHUSETTS COMPARED TO RATES IN OTHER NORTHEAST STATES							
Class	Description	Massachusetts Effective 7/1/2013	Connecticut Effective 12/1/2012	Rhode Island Effective 9/30/2013	N. Hampshire Effective 10/1/2013	New Jersey Effective 12/1/2012	PA-Territory 4 Effective 9/1/2013
80152	Neurology - incl children, major surgery	111,274	109,897	90,911	114,857	92,156	95,805
80153	OB, gynecology, major surgery	104,071	121,696	100,982	77,990	108,082	101,122
80168	OB, major surgery	104,071	121,696	100,982	77,990	108,082	101,122
80154	Orthopedic incl. spinal, major surgery	89,418	90,207	66,250	66,645	69,131	71,867
80146	Vascular, major surgery	59,257	62,597	56,169	58,138	56,561	58,800
80150	Cardiovascular disease, major surgery	59,257	62,597	68,881	58,138	53,091	55,194
80170	Head & neck, major surgery	59,257	62,597	41,641	51,047	53,091	55,194
80171	Traumatic, major surgery	59,257	62,597	N/A	58,138	53,091	55,194
80354	Orthopedic excl. spinal, major surgery	48,353	75,301	53,022	51,047	56,561	58,800
80141	Cardiac, major surgery	48,305	46,772	N/A	58,138	53,091	55,194
80143	General (NOC), major surgery	48,305	75,301	40,264	51,543	53,091	55,194
80144	Thoracic, major surgery	48,305	62,597	41,641	58,138	56,561	58,800
80155	Plastic - otorhinolaryngology, major surg.	48,305	62,597	56,169	48,212	53,091	55,194
80156	Plastic (NOC), major surgery	48,305	62,597	56,169	48,212	53,091	55,194
80157	Emergency med, incl major surg (brd cert)	48,305	46,772	N/A	51,047	37,821	39,317
80166	Abdominal, major surgery	48,305	46,772	N/A	48,212	53,091	55,194
80167	Gynecology, major surgery	48,305	46,772	40,264	51,047	53,091	55,194
80169	Hand, major surgery	48,305	46,772	38,147	48,212	53,091	55,194
80184	Bariatric, major surgery	48,305	75,301	40,264	48,212	53,091	55,194
80465	Emergency med, inc major surg (no brd cert)	48,305	46,772	N/A	N/A	37,821	39,317
80102	Emergency med, no major surg (brd cert)	33,170	31,067	27,552	21,071	28,860	30,904
80464	Emergency med, no major surg (no brd cert)	33,170	31,067	N/A	21,071	28,860	30,904
80101	Bronco-Esophagology, major surgery	32,143	33,706	N/A	34,032	23,542	24,475
80103	Endocrinology, major surgery	32,143	33,706	N/A	34,032	17,722	18,423
80104	Gastroenterology, major surgery	32,143	33,706	N/A	24,106	23,542	24,475

\*Coverys' 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 15**

Among the specialty groups, Massachusetts' average rates for the obstetrician rating classes (80153 and 80168) are \$104,071; this is in the middle of rates reported for five other Northeast Region states, but over \$26,000 more than what is reported for rates for obstetricians in New Hampshire.

<sup>26</sup> Rates presented by Coverys 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.

## Recent Medical Malpractice Reforms

Chapter 224 of the Acts of 2012<sup>27</sup> - An Act Improving The Quality of Health Care and Reducing Costs Through Increased Transparency, Efficiency and Innovation - established new statutory provisions that prevent a patient from commencing a legal medical malpractice lawsuit against a Massachusetts-based health care provider until 182 days after the patient has given the health care provider a written notice of a malpractice claim. Essentially, this so-called “cooling-off period” establishes a period of time during which the aggrieved patient and the health care providers might communicate and exchange documents prior to the commencement of litigation, in the hope that the two sides may resolve the malpractice claim. This statute also makes a provider’s apology inadmissible as evidence in a medical malpractice proceeding.

Chapter 224 of the Acts of 2012 also increases the statutory cap on medical malpractice damages for non-profit organizations that provide health care from \$20,000 to \$100,000, exclusive of interest and costs, and lowers the interest rate on malpractice damages from 4 percent to 2 percent.

These changes are intended to allow for more claims to be settled prior to any cases going into litigation. Prior to these changes, many health care providers may not have learned that a lawsuit had been filed until they were notified by the Medical Malpractice Tribunal. Chapter 224 also provides health care providers with the opportunity to seek dismissal of malpractice actions brought by plaintiffs who fail to comply with the statute’s notice requirements.

## Conclusion

While medical malpractice premiums have been relatively stable over the past several 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 higher cost of medical malpractice claims here.

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. Specifically, the 2007 report examined ways to address the number and 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;

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<sup>27</sup> Please see Chapter 224 of the Acts of 2012 sections 220, 221, 222, and 223 for complete description at <https://malegislature.gov/Laws/SessionLaws/Acts/2012/Chapter224>.



## Medical Malpractice Insurance in the Massachusetts Market

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- 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 identified that certain specialties (*e.g.*, obstetrics and gynecology) have higher claims and higher premiums than other specialties and identified that there may be ways to temper premiums for these specialties by looking at the following changes:

- Increasing other providers' premiums to subsidize high-risk providers' premiums;
- Assessing 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 report or the calendar year 2008, 2009 and 2011 reports, it does believe that the calendar year 2007 analysis and recommendations remain valid for the Massachusetts medical malpractice market today.

### 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 2012:<sup>28</sup>

<b>Company Name</b>	<b>Domicile</b>
ACE American Insurance Company	PA
American Alternative Insurance Corporation	DE
American Casualty Company of Reading, Pennsylvania	PA
American Insurance Company	OH
Chicago Insurance Company	IL
Church Mutual Insurance Company	WI
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
Great Divide Insurance Company	ND
Greenwich Insurance Company	DE
Liberty Insurance Underwriters, Inc	IL
Medical Professional Mutual Insurance Company	MA
Medical Protective Company	IN
National Union Fire Insurance Company of Pittsburgh, PA	PA
NCMIC Insurance Company	IA
OneBeacon Insurance Company	PA
PACO Assurance Company, Inc.	IL
Pharmacists Mutual Insurance Company	IA
Podiatry Insurance Company of America	IL
Professional Solutions Insurance Company	IA
ProSelect Insurance Company	MA
State Farm Fire and Casualty Company	IL
Zurich American Insurance Company	NY

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<sup>28</sup> According to direct written premium 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 2012:<sup>29</sup>

Admiral Insurance Company	DE
AIX Specialty Insurance Company	DE
Arch Specialty Insurance Company	NE
Berkley Assurance Company	IA
Catlin Specialty Insurance Company	DE
Chartis Specialty Insurance Company	IL
Chubb Custom Insurance Company	DE
Colony Insurance Company	VA
Columbia Casualty Company	IL
Darwin Select Insurance Company	AR
Essex Insurance Company	DE
Evanston Insurance Company	IL
Everest Indemnity Insurance Company	DE
General Star Insurance Company	CT
Hallmark Specialty Insurance Company	OK
Homeland Insurance Company of New York	NY
Hudson Specialty Insurance Company	NY
Illinois Union Insurance Company	IL
Indian Harbor Insurance Company	ND
Interstate Fire and Casualty Company	IL
Ironshore Specialty Insurance Company	AZ
James River Insurance Company	OH
Kinsale Insurance Company	AR
Landmark American Insurance Company	OK
Lexington Insurance Company	DE
Liberty Surplus Insurance Corporation	NH
National Fire & Marine Insurance Company	NE
Nautilus Insurance Company	AZ
ProAssurance Casualty Company	MI
Professional Underwriters Liability Insurance Company	UT
Steadfast Insurance Company	DE
Torus Specialty Insurance Company	DE
Western World Insurance Company, Inc.	NH

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<sup>29</sup> According to direct written premium 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 20112:<sup>30</sup>

<b>Company Name</b>	<b>Domicile</b>
Affiliates Insurance Reciprocal (RRG)	VT
Allied Professionals Insurance Co. (RRG)	AZ
American Association of Orthodontists Insurance Co. (RRG)	AZ
American Excess Insurance Exchange (RRG)	VT
Applied Medico Legal Solutions, Inc. (RRG)	AZ
Caring Communities Reciprocal (RRG)	DC
CMIC Risk Retention Group	DC
Controlled Risk Insurance Co. of VT, Inc. (RRG) [aka, CRICO]	VT
Eastern Dentists Insurance Co. (RRG)	VT
Emergency Physicians Insurance Company, Inc. (RRG)	NV
Green Hills Insurance Co. (RRG)	VT
Healthcare Industry Liability Reciprocal Co. (RRG)	DC
National Medical Professional, Inc. (RRG)	SC
Oceanus Insurance Company (RRG)	SC
OMS National Insurance Co. (RRG)	IL
Ophthalmic Mutual Insurance Co. (RRG)	VT
Preferred Physicians Medical RRG, Inc.	MO

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<sup>30</sup> According to direct written premium reported to the National Association of Insurance Commissioners.