

**Massachusetts Division of Insurance
Medical Malpractice Insurance Report
for the 2019 Calendar Year**

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Commissioner of Insurance

Acknowledgements

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The Division relies on insurance companies, the National Association of Insurance Commissioners (NAIC), 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 requires that doctors have medical malpractice coverage¹ 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.²

Massachusetts medical malpractice insurance can be obtained through licensed insurers, risk retention groups and surplus lines insurers. Medical malpractice insurers licensed in Massachusetts and providing 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 insurers underwriting standards.

Trends observed for the medical malpractice market through 2019 include the following:

- Total medical malpractice premiums, consisting of revenue from licensed insurance insurers, risk retention groups and surplus lines companies, increased by approximately 6.3% to \$339.7 million in 2019 from \$319.6 million in 2018 as indicated in figure 5.
- Licensed insurers no longer provide the majority of medical malpractice coverage in Massachusetts when compared to what is covered by risk retention groups. Insurers’ share of the market, compared to that offered by surplus lines carriers and risk retention groups, continued to decrease to 34.7% in 2019 from 37.7% in 2018.
- Almost three-fourths (69%) of the medical malpractice 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.
- The financial strength of licensed insurance companies continues to improve in Massachusetts without significant rate activity. Coverys has not changed its rates for physicians and surgeons since 2011.
- While pressure on rates has eased, Massachusetts continues to have higher medical malpractice claim payments than most states. In 2019, the Massachusetts mean malpractice claim payment was the sixth highest in the country as seen in Figure 13.

¹ 243 CMR 2.07(16).

² M.G.L. c .175, §193U.

Massachusetts Health Care Professionals

Number of Professionals

For 2019, there were approximately 328,529 individual health care professionals licensed by state agencies to practice in the following categories:³

189,712	Nurses
27,424	Social Workers
38,423	Medical and Osteopathic Doctors
25,008	Allied Health Providers (Therapists, Assistants and Athletic Trainers)
7,215	Dentists
12,842	Allied Mental Health and Human Service Providers
6,127	Psychologists
8,017	Audiologists, Speech Pathologists and Assistants
3,444	Respiratory Care Specialists
1,711	Chiropractors
3,071	Dietitians/Nutritionists
1,454	Dispensing Opticians
5,215	Physician Assistants
1,504	Optometrists
1,101	Acupuncturists
479	Podiatrists
196	Hearing Instrument Specialists
79	Certified Health Officers
131	Perfusionists

In addition to the above-noted individual professionals, approximately 1,768 facilities and programs were licensed to operate as the following types of entities:⁴

432	Nursing Homes/Rest Homes
381	Clinics
279	Home Health Care Agencies
183	Mammography Facilities
121	Hospitals (acute care and non-acute)
317	Ambulance services
78	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 Medicine,⁵ the Bureau of

³ 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; Division of Professional Licensure; 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.

⁴ Numbers of licensed facilities and programs, not including satellites, as reported to the Division of Insurance by the Bureau of Health Professions 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.

⁵ The Board of Registration in Medicine coordinates the licensing of medical doctors, osteopathic doctors and acupuncturists.

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Health Professions Licensure,⁶ Division of Professional Licensure Boards of Registration,⁷ the Department of Mental Health⁸ or the Department of Public Health.⁹ 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.¹⁰

- Doctor of Medicine;
- Doctor of Osteopathy;
- Doctor of Optometry;
- Doctor of Dental Science;
- Physical Therapists and Physical Therapist Assistants;
- Doctor of Podiatry;
- Doctor of Chiropractic;
- Registered Nurses;
- 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.

It is required that licensed medical doctors and advanced practice registered nurses with direct patient care responsibilities have medical malpractice coverage sufficient to protect against claims of at least

⁶ The Bureau 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.

⁷ Boards of Registration in the Division of Professional Licensure 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 Establishments 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.

⁸ The Department of Mental Health licenses private mental health hospitals and clinics.

⁹ 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.

¹⁰ 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.

\$100,000 per claim and \$300,000 per year¹¹. Limited liability companies or a limited liability partnership where chiropractors are a member, a partner or an employee, must also maintain coverage of at least \$500,000 per claim and \$1 million per year.¹² 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 45 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.¹³

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.)¹⁴ 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.¹⁵

In 1994, Massachusetts passed legislation to transform the MMJUA into the Medical Professional Mutual Insurance Company (now known as “Coverys”).¹⁶ Since its inception, Coverys has been one of the largest medical malpractice insurance providers in Massachusetts.

Licensed Insurance Companies

Medical malpractice insurance companies must 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 insolvency. In 2019, licensed medical

¹¹ 244 CMR 4.09; 243 CMR 2.07(16)(b).

¹² According to 233 CMR 4.04 (1), “A limited liability company or limited liability partnership which provides or offers to provide Chiropractic Treatment in Massachusetts shall maintain in good standing professional liability insurance which meets the following minimum standards:

- (a) The insurance shall cover negligence, wrongful acts, and errors and omissions;
- (b) The insurance shall insure the limited liability company and its members, as required by M.G.L. c. 156C, § 65, or the limited liability partnership and its partners as required by M.G.L. c. 108A, § 45(8)(a);
- (c) The insurance shall provide, for each registered chiropractor who is a member, partner or employee of the limited liability company or limited liability partnership, coverage in an amount of at least \$500,000 for each claim with an aggregate top limit of liability for all claims during any one year of at least \$1,000,000.”

¹³ Section 6 of Chapter 362 of the Acts of 1975.

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

¹⁵ 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.

¹⁶ 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.

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malpractice insurance companies wrote \$117.9 million in direct written premium; this is about 1.0% of the premium written for all property and casualty coverage. (Figure 1)

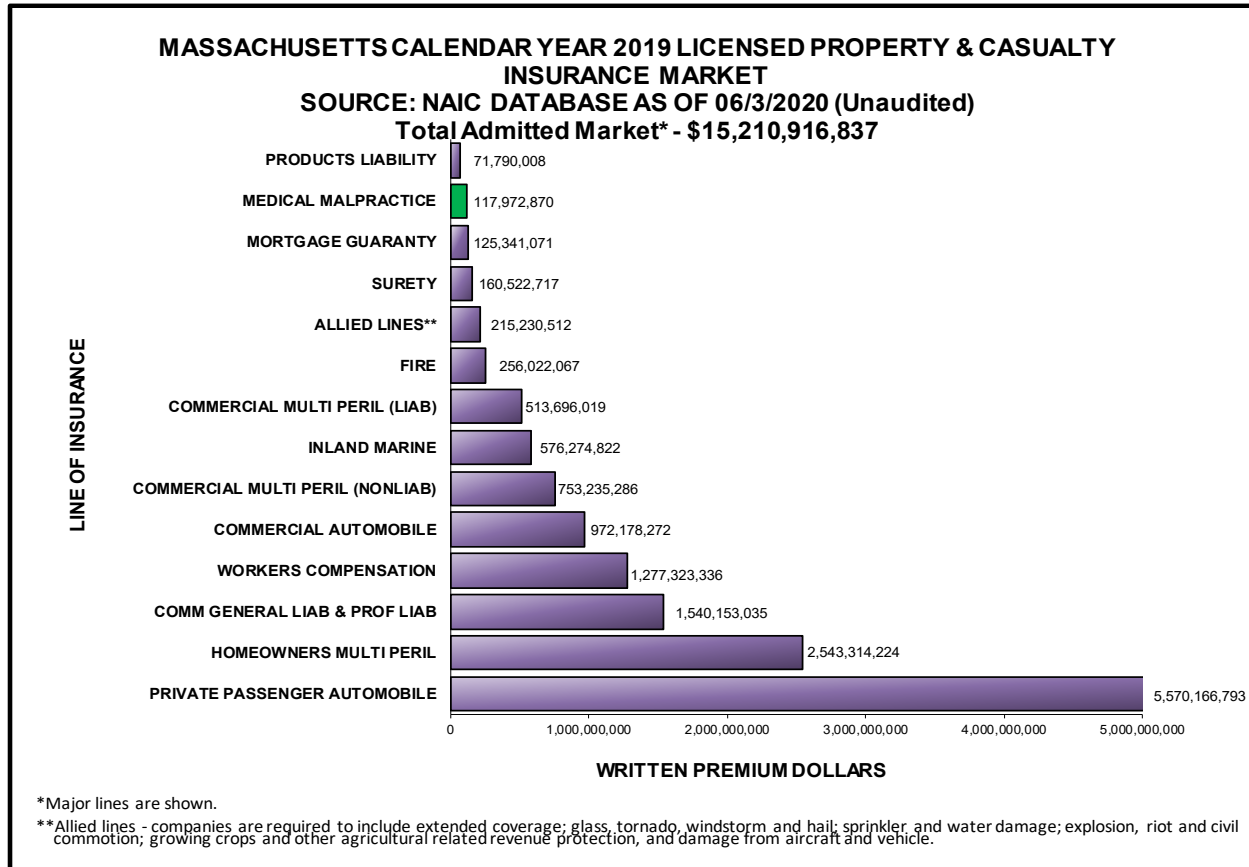
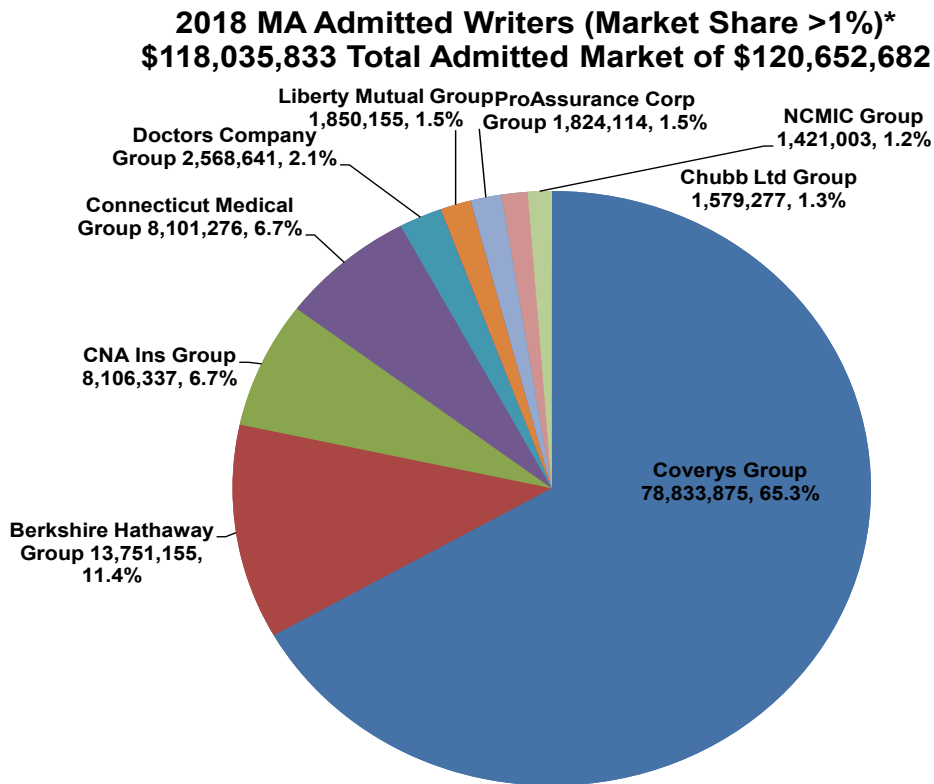


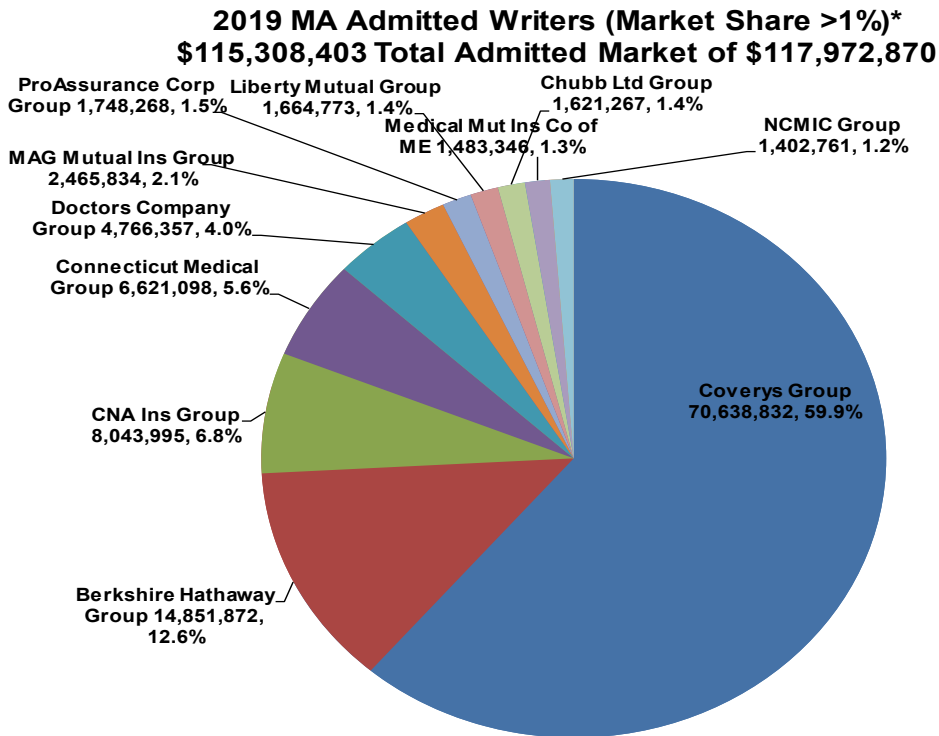
Figure 1

The Division of Insurance maintains a list of medical malpractice insurance companies on its website¹⁷ 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 2019 is in Appendix A-1.

¹⁷ The Division’s website indicates the companies that write each of the designated classes of providers.



*Based on unaudited NAIC data - direct premium written



*Based on unaudited NAIC data - direct premium written

Figure 2
 Massachusetts Division of Insurance

As noted in Figure 2 above, the Coverys Group, composed of Medical Professional Mutual Insurance Company, ProSelect Insurance Company and Preferred Professional Insurance Company, covered the predominant share of the 2019 medical malpractice insurance policies, collecting approximately 59.9% of total insurance premium. This is a decrease from its 65.3% market share of the market in 2018.

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.¹⁸ The list of surplus lines carriers writing medical malpractice coverage in 2019 is in Appendix A-2.

¹⁸ The list is located at <https://www.mass.gov/doc/massachusetts-eligible-surplus-lines-companiespdf>

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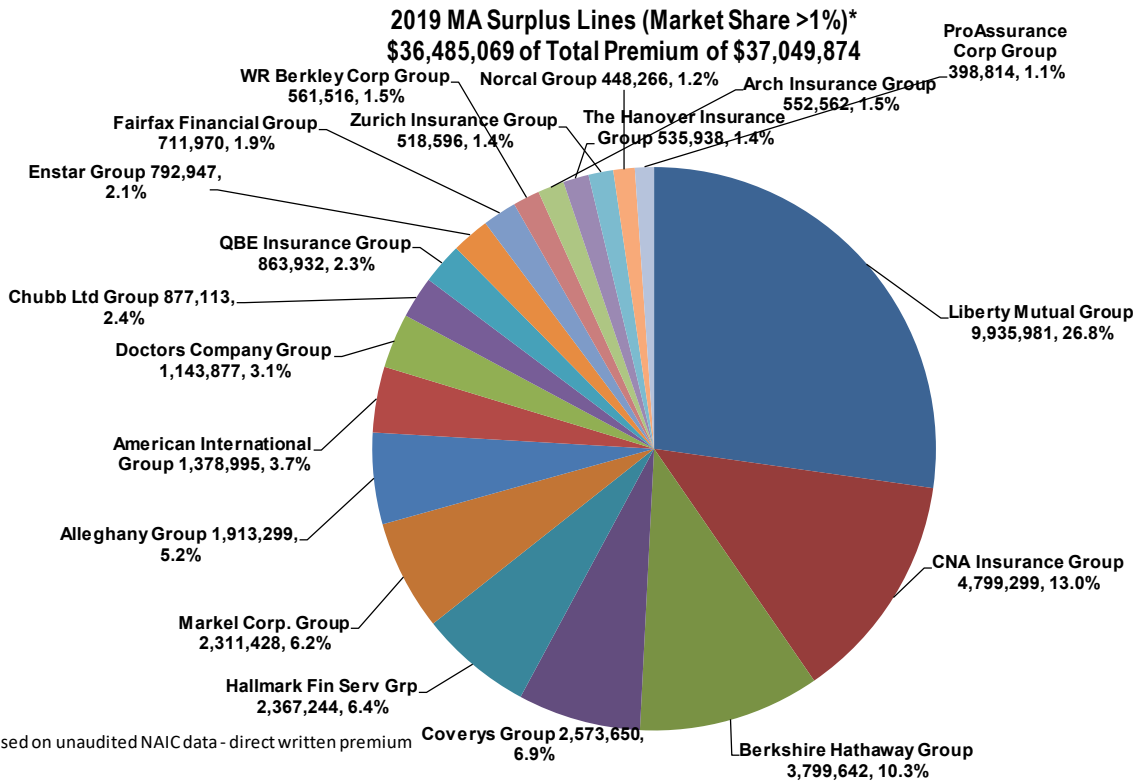
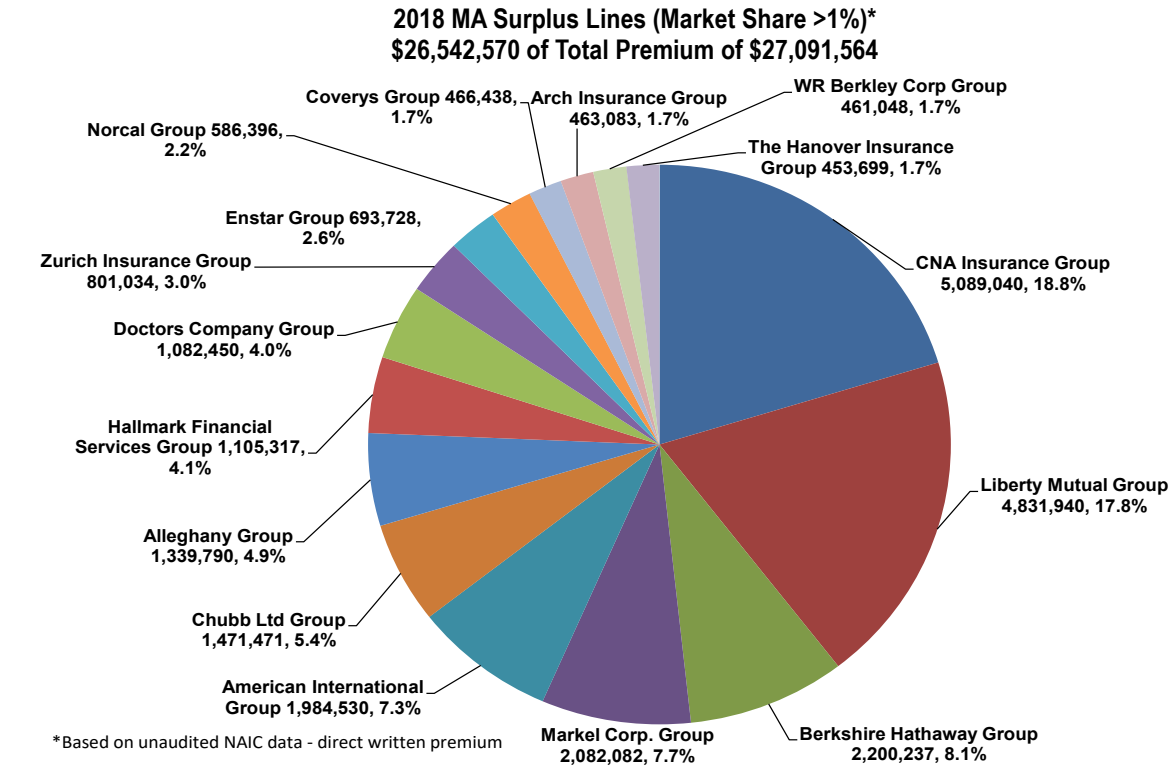


Figure 3
Massachusetts Division of Insurance

The largest medical malpractice carrier in the surplus lines market in 2019 was Liberty Mutual Group, accounting for 26.8% of the 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,¹⁹ 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.²⁰

Under federal law,

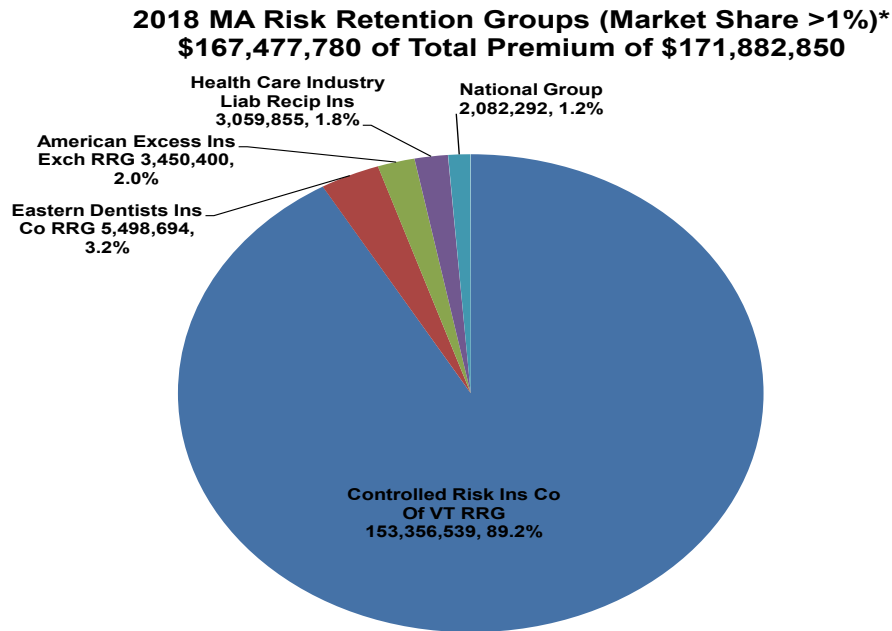
1. An RRG can be formed and owned only by members who are engaged in a similar business or activity and with similar liability risk exposure²¹; and
2. An RRG cannot exclude eligible members solely to reduce the RRG’s risk of loss.²²

¹⁹ Liability Risk Retention Act of 1986, 15 U.S.C. § 3901.

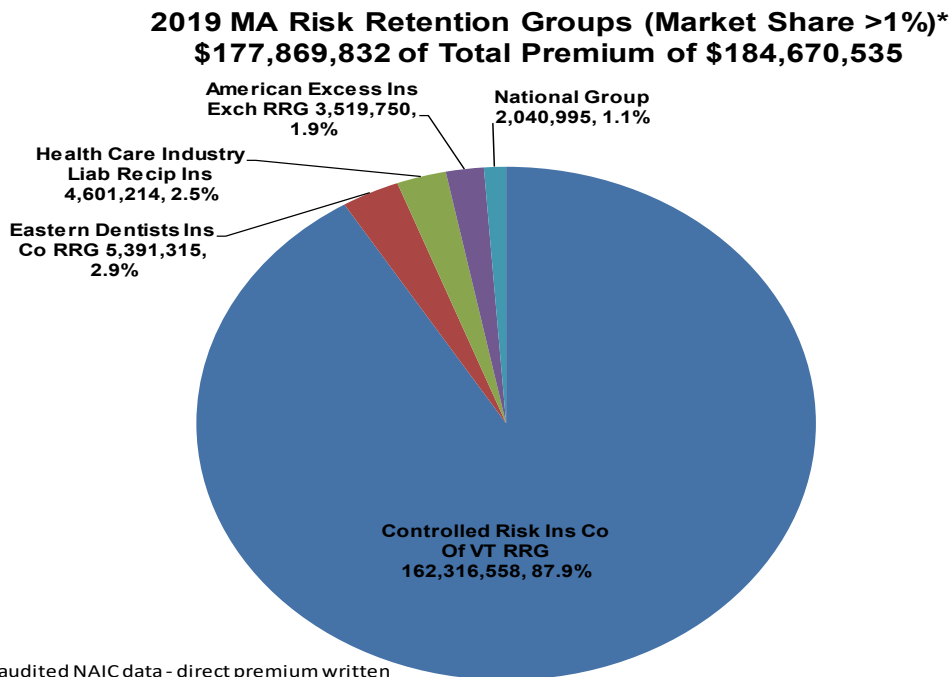
²⁰ 15 U.S.C. § 3902.

²¹ 15 U.S.C. § 3901.

²² 15 U.S.C. § 3901.



*Based on unaudited NAIC data - direct premium written



*Based on unaudited NAIC data - direct premium written

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 88% of Massachusetts Division of Insurance

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premium for 2019. (Figure 4) CRICO was created in 1979 to provide professional liability coverage to the physicians and employees of Harvard-affiliated medical institutions.²³ According to CRICO's business plan, physician applicants must meet CRICO underwriting criteria and are assigned to one of the many underwriting specialties based on level of risk exposure.

The four next largest RRGs collectively account for about 8.4% of the market, and some of them write coverage for specialty providers. The list of RRGs that were writing medical malpractice coverage in 2019 are in Appendix A-3.

Shares of the Market

During 2019, insurers, surplus lines carriers and RRGs together wrote \$339.7 million of medical malpractice premium, with 34.7% written by insurance companies, 54.4% written by RRGs and 10.9% written by surplus lines carriers. In 2018, insurers, surplus lines carriers and RRGs together wrote \$319.6 million of medical malpractice premium, with 37.7 written by insurance companies, 53.8% written by RRGs and 8.5% written by surplus lines carriers. (Figure 5)

²³ 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.	

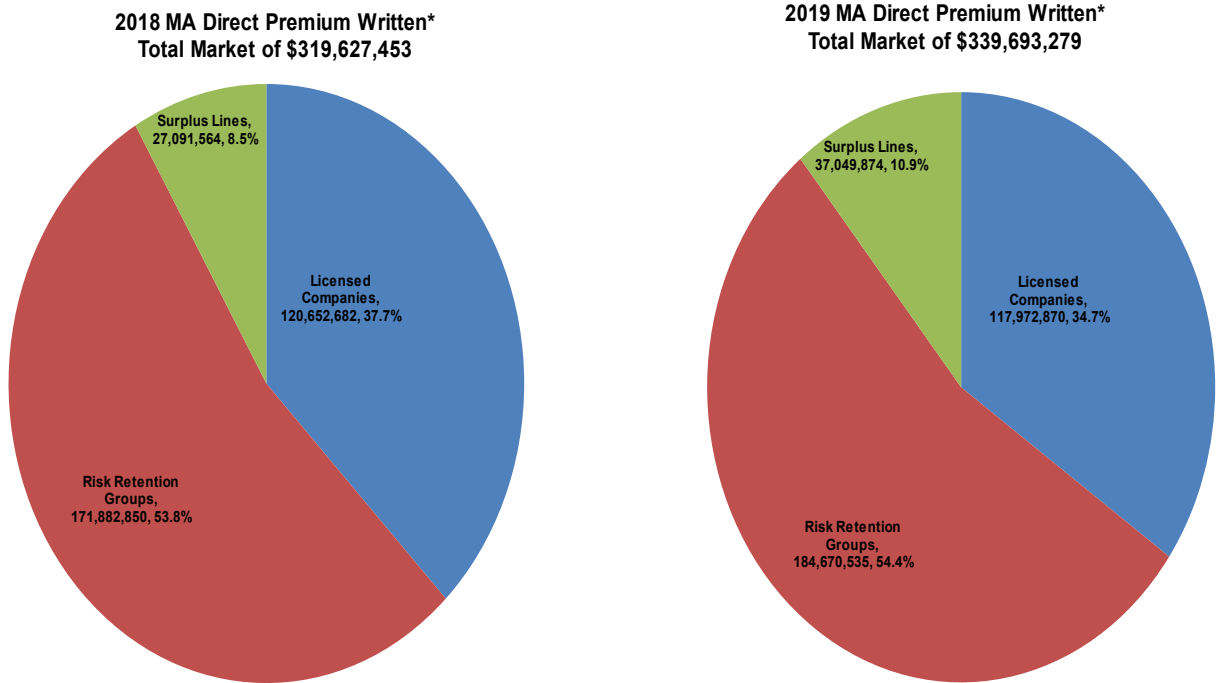
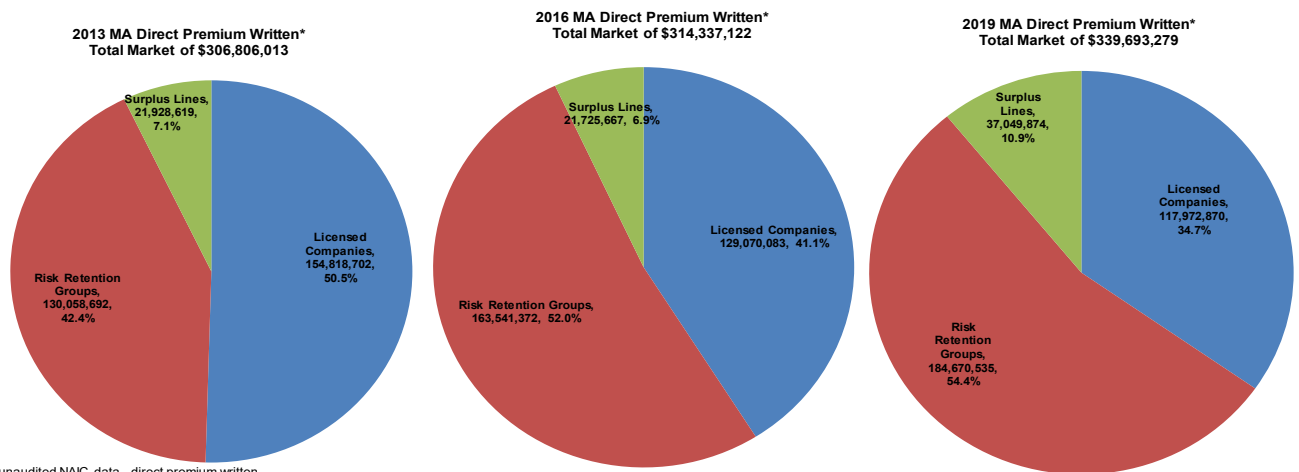


Figure 5

As noted in the Executive Summary, licensed insurers no longer provide the majority of medical malpractice coverage in Massachusetts when compared to that offered by surplus lines carriers and risk retention groups (Figure 6),

Total Market 2013, 2016, 2019



*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 2018 and 2019, total earned premium for insurance companies, RRGs and surplus lines carriers combined increased 4.1%, compared with a 2.7% increase in earned premiums between calendar years 2017 and 2018.

Licensed insurance companies had \$119.2 million in earned medical malpractice premium in 2019, which is 2.7% less than in 2018 and 5.1% less than in 2017. RRGs had earned premium of \$183.3 million in 2019, which was 6.9% more than in 2018 and 12.2% more than the \$163.3 million premium in 2017. Surplus lines carriers had earned premium of \$32.0 million in 2019 which was more than in 2018 and 2017. (Figure 7)

The statistics above shows the rate of premium change over the period 2017 to 2019 varied considerably by the type of insurance provider. The change in the average annual premium²⁴ for licensed insurance companies decreased by 4.9%, as compared to an increase of 1.9% for RRGs, and an increase of 4.9% for surplus lines insurers.

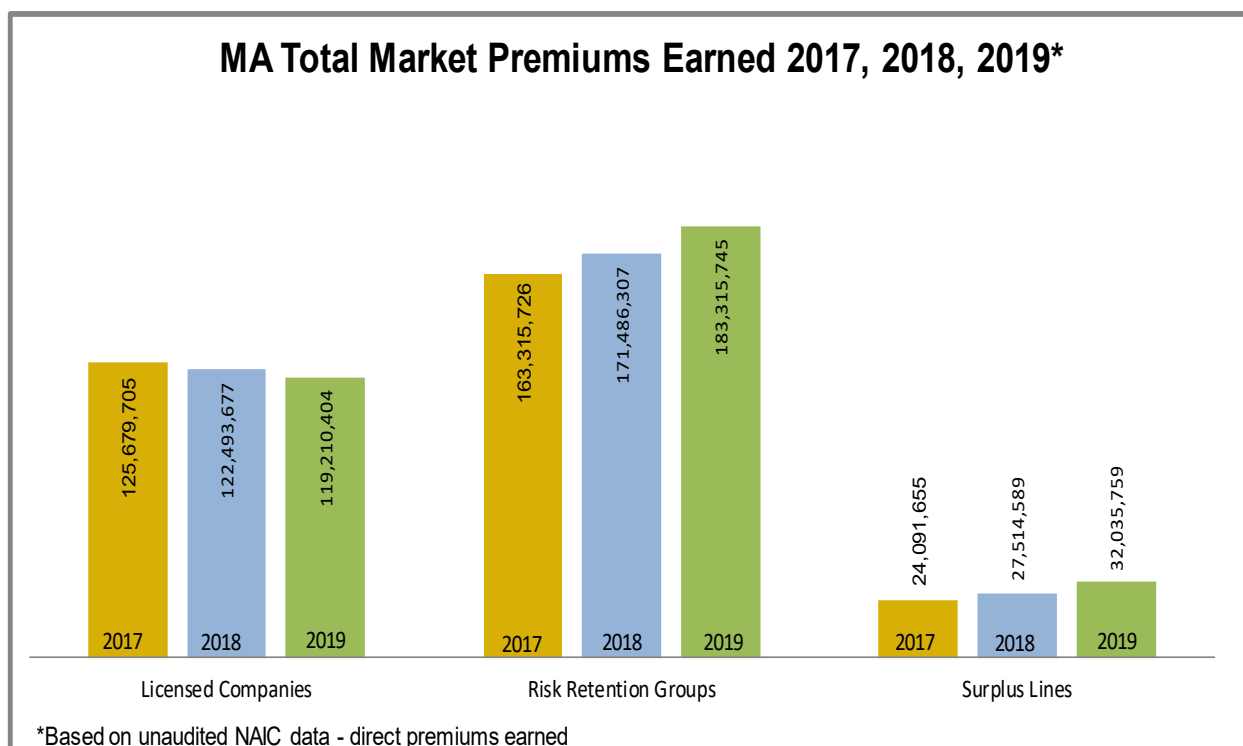


Figure 7

²⁴ Average annual change is calculated as $(2019 \text{ earned premium} / 2013 \text{ earned premium})^{(1/6)} - 1.0$ using the premiums shown in 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 only incurred claims 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 years²⁵ following a malpractice incident. Incurred claims 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.

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 2019, the median Massachusetts medical malpractice payment made on behalf of physicians was \$467,595 fifth highest in the country. The highest in the country is Illinois with a median payment of \$750,000. In 2019, the mean Massachusetts medical malpractice payment made on behalf of physicians was \$817,790 sixth in the country.

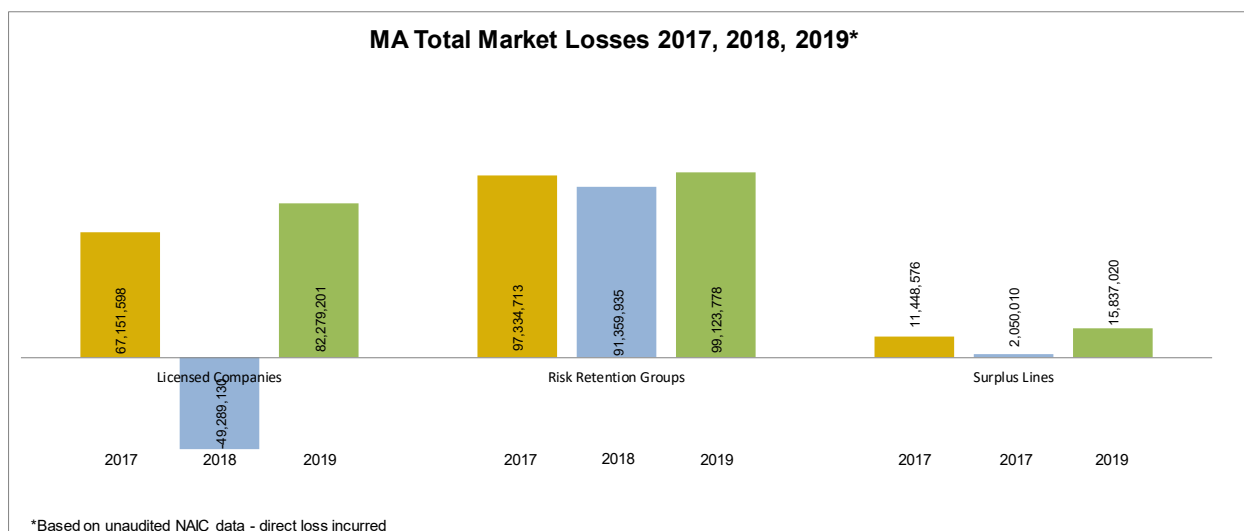


Figure 8

Massachusetts licensed insurance companies reported total incurred losses of \$82.3 million in 2019, which is less than the 2019 \$119.2 million collected in earned premiums.

The \$82.3 million in 2019 losses is less than incurred losses in 2018. These losses of \$82.3 million represent the sum of losses paid during 2019 and the change in reserves from year-end 2018 to year-end 2019. The 2018 negative value of incurred losses resulted from a change in reserving methodology by one carrier that caused a large decrease in incurred but not reported reserves

²⁵ National Practitioner Data Bank 2012 Annual Report, Table 24, Median and Mean Medical Malpractice Payment Delay, in Years, Between Incident and Payment, by Jurisdiction, 2003 – 2012, p.70.

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(IBNR) for past years.²⁶ These negative losses of \$-49.3 million represent the sum of losses paid during 2018 and the change in reserves from year-end 2017 to year-end 2018.

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 56.0% in 2017 to 59.0% in 2019. The loss ratios on a national basis for all medical malpractice companies increased from 49.2% in 2017 to 56.9% in 2019. (Figure 9)

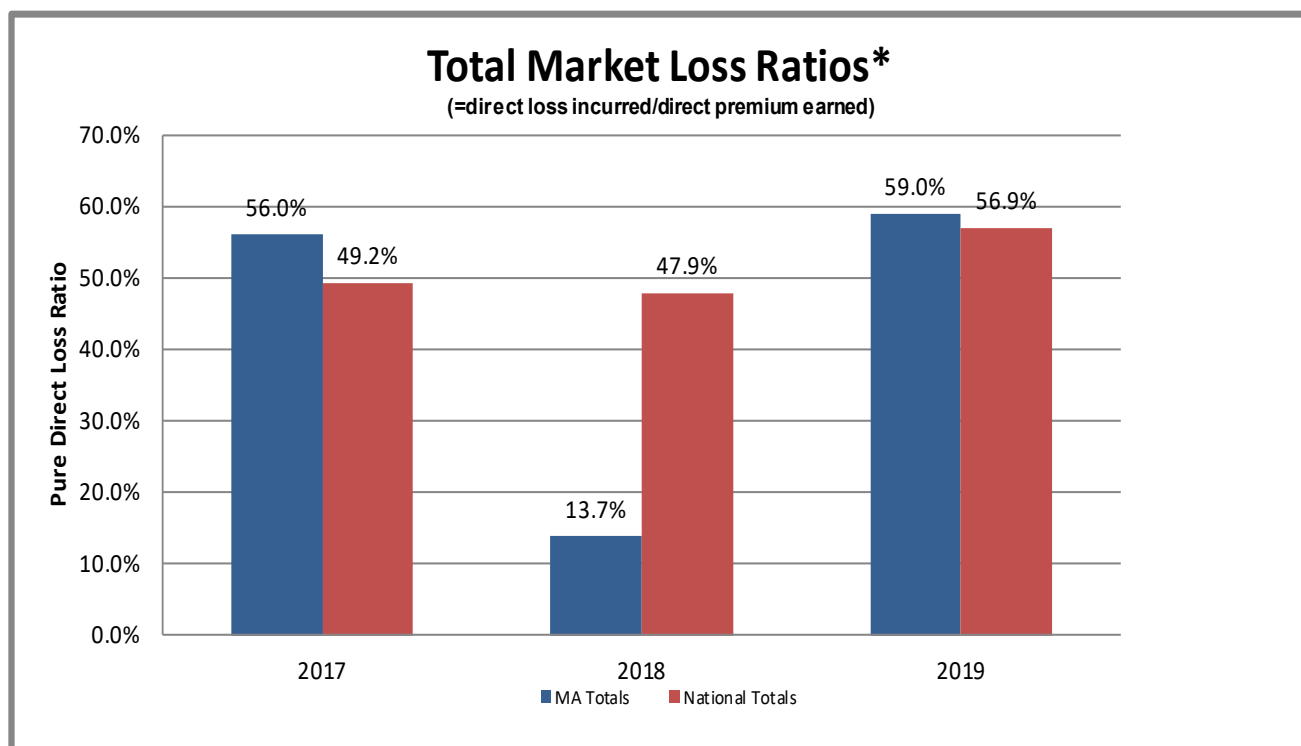


Figure 9

The licensed insurance companies' loss ratios increased from 53.4% in 2017 to 69.0% in 2019. The RRGs' loss ratios decreased during this period from 59.1% in 2017 to 54.1% in 2019. The surplus lines carriers' loss ratios increased from 47.5% in 2017 to 49.4% in 2019. (Figure 10)²⁷

²⁶ IBNR are the reserves for claims that become due with the occurrence of the events covered under the insurance policy, but have not been reported yet.

²⁷Includes losses covered by reinsurance and does not necessarily reflect the loss expense of the primary insurers.

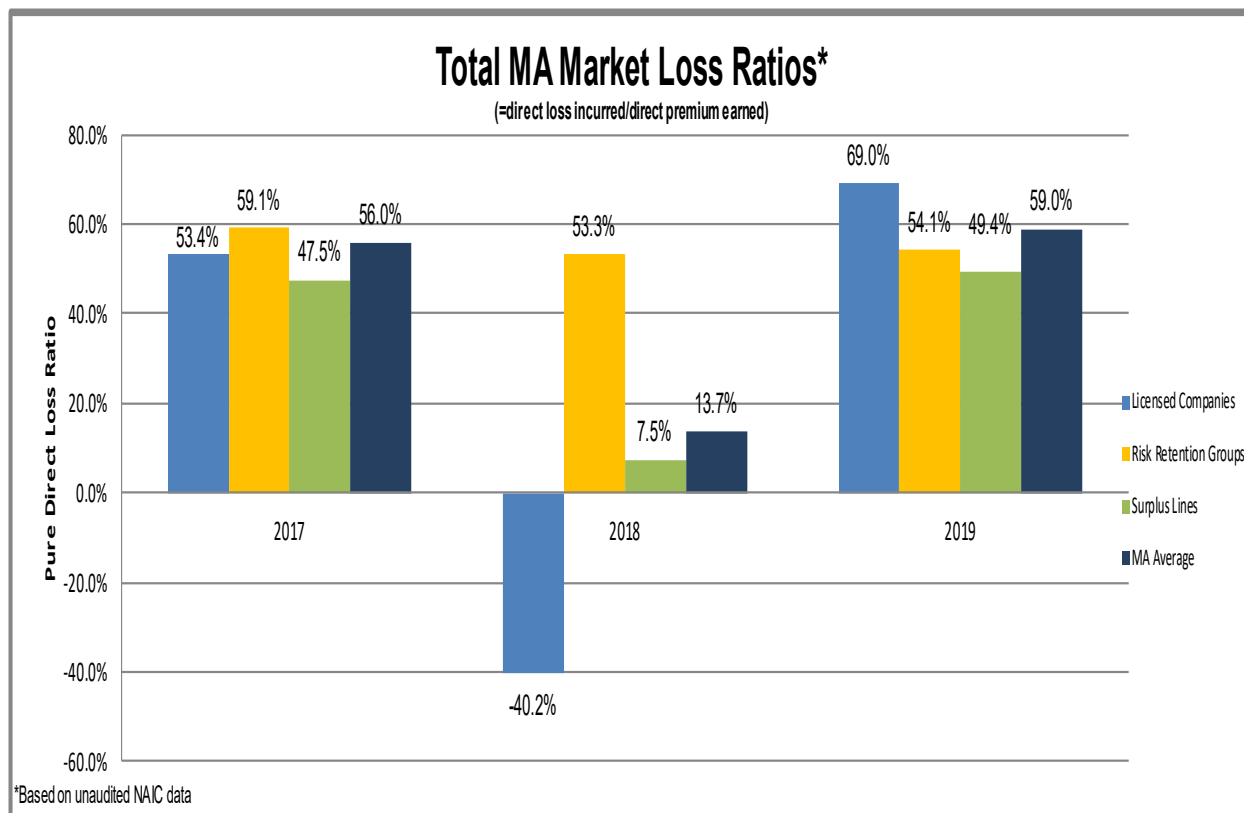


Figure 10

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,²⁸ 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 smooths 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 returns can vary widely from year to year, the Division

²⁸Federal/state income tax and dividends to stockholders are paid out of the profits earned during the year.

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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)
Calendar Year	Earned Premium	5 Year Moving Loss Ratio	1 Year Other Expense Ratio	1 Year Commission & Premium Tax	1 Year Dividend Ratio	5 Year Average Net Investment Income	Average Return on Premium
2019	\$119,211	39.1%	22.2%	14.5%	6.1%	19.5%	37.6%
2018	\$122,505	34.1%	21.9%	15.1%	6.5%	18.5%	40.9%
2017	\$125,679	47.6%	22.7%	14.1%	8.3%	17.4%	24.7%
2016	\$133,094	44.4%	24.7%	16.2%	6.2%	17.1%	25.6%
2015	\$141,763	39.8%	16.4%	13.4%	1.4%	17.1%	46.2%
2014	\$152,077	49.3%	22.6%	10.0%	8.0%	17.4%	27.4%
(A) NAIC database, licensed companies only							
(B) NAIC database, calendar year direct incurred loss & DCCE adjusted by a factor of 1.072 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 licensed insurer in Massachusetts, writing approximately 21.6% of the total market, and 59.9% of the admitted market. As such, its rate history can be used to illustrate the relationship between expected cost increases and changes in rates.

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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%. (Figure 12)

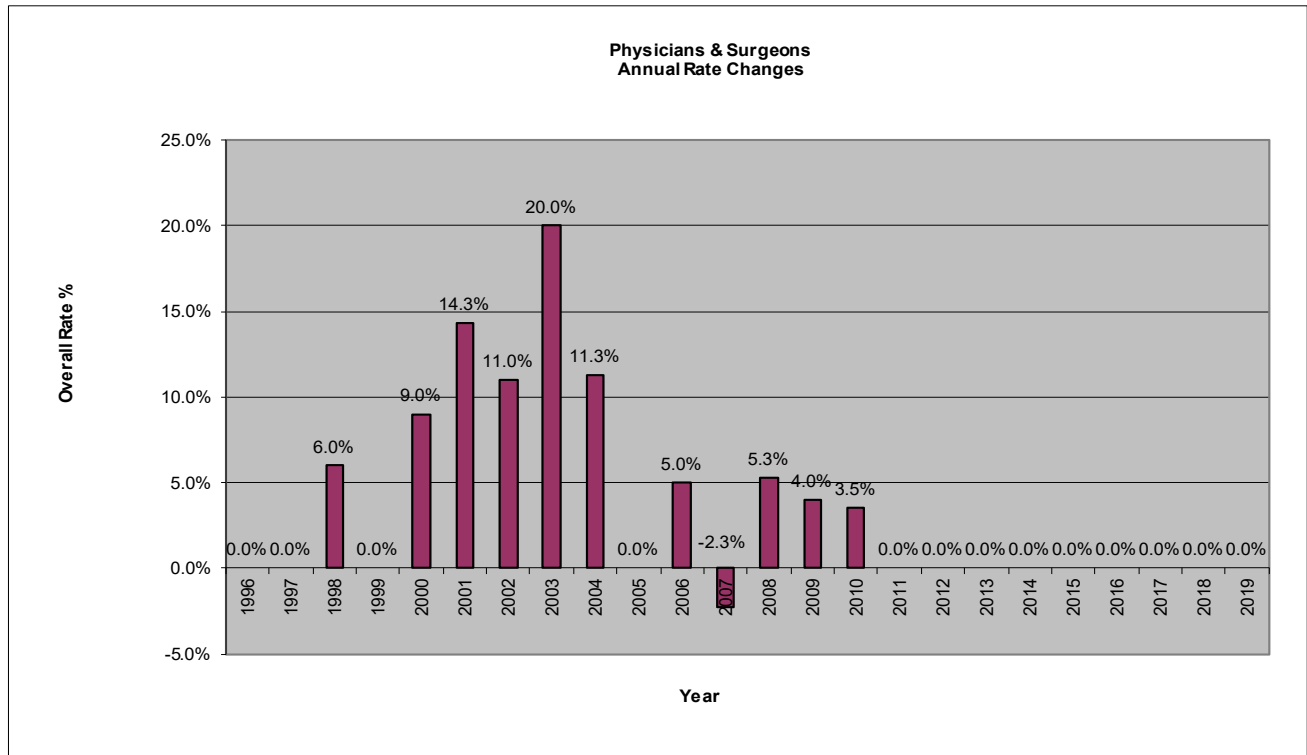


Figure 12

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, rate changes have remained flat or declined from a high in 2003.

Medical Malpractice Insurance Report for Calendar Year 2019

National Practitioner Data Bank

Median and Mean Medical Malpractice Payments and Rank by Jurisdiction for 2019

State	2019		2019	
	Median Payment	Rank	Mean Payment	Rank
AK	\$240,000	19	\$298,889	44
AL	\$370,000	9	\$508,270	13
AR	\$250,000	18	\$300,102	42
AZ	\$300,000	14	\$439,226	23
CA	\$100,000	29	\$263,640	46
CO	\$300,000	14	\$469,006	19
CT	\$650,000	2	\$739,395	7
DC	\$500,000	4	\$426,714	25
DE	\$367,482	10	\$412,714	27
FL	\$250,000	18	\$344,432	36
GA	\$350,000	11	\$490,374	16
HI	\$500,000	4	\$452,138	21
IA	\$275,000	17	\$663,530	10
ID	\$150,000	28	\$373,230	32
IL	\$750,000	1	\$933,510	4
IN	\$187,001	27	\$302,354	41
KS	\$200,000	25	\$224,657	51
KY	\$200,000	25	\$299,097	43
LA	\$100,000	29	\$312,877	40
MA	\$467,595	5	\$817,790	6
MD	\$295,834	15	\$414,569	26
ME	\$207,500	24	\$239,539	50
MI	\$150,000	28	\$248,744	47
MN	\$320,000	13	\$926,281	5
MO	\$275,000	17	\$383,195	30
MS	\$81,250	30	\$241,503	49
MT	\$250,000	18	\$399,274	28
NC	\$150,000	28	\$443,976	22
ND	\$195,000	26	\$977,781	3
NE	\$500,000	4	\$453,698	20
NH	\$275,000	17	\$476,857	17
NJ	\$375,000	8	\$507,162	14
NM	\$200,000	25	\$361,950	35
NV	\$150,000	28	\$343,347	37
NY	\$275,000	17	\$437,387	24
OH	\$334,423	12	\$474,899	18
OK	\$225,000	21	\$330,122	39
OR	\$285,000	16	\$730,822	8
PA	\$500,000	4	\$515,578	12
RI	\$380,000	7	\$557,164	11
SC	\$226,250	20	\$365,017	34
SD	\$550,000	3	\$1,707,500	1
TN	\$210,002	23	\$370,790	33
TX	\$150,000	28	\$273,283	45
UT	\$222,231	22	\$333,365	38
VA	\$350,000	11	\$498,568	15
VT	\$400,000	6	\$390,833	29
WA	\$350,000	11	\$709,886	9
WI	\$150,000	28	\$1,008,367	2
WV	\$250,000	18	\$373,959	31
WY	\$250,000	18	\$242,143	48

Note: Year is malpractice payment year.

Figure 13²⁹

²⁹ Figure 13 and Figure 14 are from the National Practitioner Data Bank. More recent National Practitioner Data for figure 14 was not available at the time of this report.

Medical Malpractice Insurance Report for Calendar Year 2019

Premiums Compared to Those of Other States

Coverys submitted materials to reflect Massachusetts' rates as of October 1, 2020. The rates that the company charges, generally, in Massachusetts and Connecticut are among the highest of the six Northeast states, but not for every specialty. (Figure 15)

COVERYS GROUP'S (FORMERLY PROMUTUAL GROUP) MATURE RATES BY CLASS AS OF 10/1/2020 FOR CLAIMS MADE POLICIES* 25 HIGHEST MASSACHUSETTS COMPARED TO RATES IN OTHER NORTHEAST STATES						
Class Description	Massachusetts Effective 7/1/2015	Connecticut Effective 12/1/2018	Rhode Island Effective 9/30/2018	N. Hampshire Effective 10/1/2018	New Jersey Effective 1/1/2019	PA-Territory 4 Effective 9/1/2018
80152 Neurology - incl children, major surgery	111,274	137,606	105,239	120,602	115,397	105,380
80153 OB, gynecology, major surgery	104,071	152,405	116,895	81,890	125,211	111,229
80168 OB, major surgery	104,071	152,405	116,895	81,890	125,211	111,229
80154 Orthopedic incl. spinal, major surgery	89,418	56,081	76,690	69,979	80,087	79,050
80146 Vascular, major surgery	59,257	75,058	65,021	61,046	65,526	64,678
80150 Cardiovascular disease, major surgery	59,257	75,058	79,737	61,046	66,675	60,709
80170 Head & neck, major surgery	59,257	75,058	48,204	53,601	66,675	60,709
80171 Traumatic, major surgery	59,257	75,058	65,021	61,046	66,675	60,709
80354 Orthopedic excl. spinal, major surgery	48,353	40,416	61,377	53,601	65,526	64,678
80141 Cardiac, major surgery	48,305	56,081	46,610	61,046	66,675	60,709
80143 General (NOC), major surgery	48,305	94,303	46,610	54,121	66,675	60,709
80144 Thoracic, major surgery	48,305	75,058	48,204	61,046	65,526	64,678
80155 Plastic - otorhinolaryngology, major surg.	48,305	75,058	65,021	50,623	66,675	60,709
80156 Plastic (NOC), major surgery	48,305	75,058	65,021	50,623	66,675	60,709
80157 Emergency med, incl major surg (brd cert)	48,305	40,416	46,610	53,601	41,368	43,247
80166 Abdominal, major surgery	48,305	56,081	46,610	50,623	66,675	60,709
80167 Gynecology, major surgery	48,305	56,081	46,610	53,601	66,675	60,709
80169 Hand, major surgery	48,305	56,081	44,159	50,623	66,675	60,709
80184 Bariatric, major surgery	48,305	94,303	46,610	50,623	66,675	60,709
80465 Emergency med, inc major surg (no brd cert)	48,305	40,416	46,610	N/A	41,368	43,247
80102 Emergency med, no major surg (brd cert)	33,170	37,048	31,894	22,126	33,434	33,991
80464 Emergency med, no major surg (no brd cert)	33,170	37,048	31,894	22,126	33,434	33,991
80101 Bronco-Esophagology, major surgery	32,143	40,416	26,994	35,734	27,273	26,921
80103 Endocrinology, major surgery	32,143	40,416	26,994	35,734	20,531	20,266
80104 Gastroenterology, major surgery	32,143	40,416	26,994	25,312	27,273	26,921

*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 14

Among the specialty groups, Massachusetts' average rates for the obstetrician rating classes (80153 and 80168) are both \$104,071; this is on the lower end of rates reported for five other Northeast Region states. The obstetrician rates have been a point of contention in past years.

Past Medical Malpractice Reforms

Chapter 224 of the Acts of 2012³⁰ - 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 increased 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 were 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 provided 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

Since 2007, the Division’s medical malpractice reports have analyzed medical malpractice costs in Massachusetts. While premiums have remained stable for many years, the following could be examined should the number and size of medical malpractice claims increase:

- 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.

There are certain specialties (*e.g.*, obstetrics and gynecology) that have higher claims and higher premiums than other specialties and 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.

³⁰ 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 Report for Calendar Year 2019

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 2019:³¹

Company Name	Domicile
ACE American Insurance Company	PA
Ace Fire Underwriters Insurance Company	PA
Ace Property & Casualty Insurance Company	PA
Allied World Insurance Company	NH
American Alternative Insurance Corporation	DE
American Casualty Company of Reading, Pennsylvania	PA
American Home Assurance Company	NY
Aspen American Insurance Company	TX
Atlantic Specialty Insurance Company	NY
Beazley Insurance Company, Inc.	CT
Berkshire Hathaway Specialty Insurance Company	NE
Campmed Casualty & Indemnity Company, Inc.	NH
Church Mutual Insurance Company	WI
Connecticut Medical Insurance Company	CT
Doctors Company An Interinsurance Exchange	CA
Fair American Insurance and Reinsurance Company	NY
Federal Insurance Company	IN
Fortress Insurance Company	IL
Great Divide Insurance Company	ND
Hudson Insurance Company	DE
Liberty Insurance Underwriters, Inc.	IL
MAG Mutual Insurance Company	GA
Medical Mutual Insurance Company of Maine	ME
Medical Professional Mutual Insurance Company	MA
Medical Protective Company	IN
NCMIC Insurance Company	IA
Pharmacists Mutual Insurance Company	IA
Preferred Professional Insurance Company	NE
ProAssurance Insurance Company of America	IL
Professional Solutions Insurance Company	IA
ProSelect Insurance Company	NE
State Farm Fire and Casualty Company	IL

³¹ 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 2019:³²

Company Name	Domicile
Admiral Insurance Company	DE
AIX Specialty Insurance Company	DE
Allied World Surplus Lines Insurance Company	AR
Arch Specialty Insurance Company	MO
Aspen Specialty Insurance Company	ND
Berkley Assurance Company	IA
Capitol Specialty Insurance Corporation	WI
Chubb Custom Insurance Company	NJ
Columbia Casualty Company	IL
Coverys Specialty Insurance Company	NJ
Endurance American Specialty Insurance Company	DE
Evanston Insurance Company	IL
General Star Indemnity Company	DE
Hallmark Specialty Insurance Company	OK
Homeland Insurance Company of New York	NY
Hudson Specialty Insurance Company	NY
Illinois Union Insurance Company	IL
Ironshore Specialty Insurance Company	AZ
ISMIE Indemnity Company	IL
James River Insurance Company	OH
Kinsale Insurance Company	AR
Landmark American Insurance Company	NH
Lexington Insurance Company	DE
Liberty Surplus Insurance Corporation	NH
National Fire & Marine Insurance Company	NE
Nautilus Insurance Company	AZ
Navigators Specialty Insurance Company	NY
NORCAL Specialty Insurance Company	TX
ProAssurance Casualty Company	MI
QBE Specialty Insurance Company	ND
StarStone Specialty Insurance Company	DE
Steadfast Insurance Company	IL
TDC Specialty Insurance Company	DC
United Specialty Insurance Company	DE
Western World Insurance Company, Inc.	NH

³² 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 2019:³³

Company Name	Domicile
Academic Medical Professionals Insurance, LLC (RRG)	VT
Affiliates Insurance Reciprocal (RRG)	VT
Allied Professionals Insurance Company (RRG)	AZ
American Association of Orthodontists (RRG)	AZ
American Excess Insurance Exchange (RRG)	VT
Applied Medico Legal Solutions (RRG)	AZ
Caring Communities Reciprocal (RRG)	DC
CMIC (RRG)	DC
Controlled Risk Ins Co of VT (RRG) [aka CRICO]	VT
COPIC (RRG)	DC
Eastern Dentists Insurance Company (RRG)	VT
Emergency Physicians Insurance Exchange (RRG)	VT
Franklin Casualty Insurance Company (RRG)	VT
Green Hills Insurance Company (RRG)	VT
Health Care Industry Liability Reciprocal Insurance Company	DC
Lone Star Alliance (RRG)	DC
MedChoice RRG, Inc.	VT
Oms National Insurance Company (RRG)	IL
Ophthalmic Mutual Insurance Company (RRG)	VT
Preferred Physicians Medical (RRG)	MO
Scrubs Mutual Assurance Company (RRG)	NV
The Doctors Company a Reciprocal Exchange (RRG)	DC
Titan RRG, Inc.	AZ
Urgent Care Assurance Company RRG, Inc.	NV

³³ According to direct written premium reported to the National Association of Insurance Commissioners.