

**Massachusetts Division of Insurance
Medical Malpractice Insurance Report
for the 2020 Calendar Year**

Gary D. Anderson
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; Caleb Huntington, State Rating Bureau Mathematician; and Bashiru Abubakare, State Rating Bureau Actuary/Statistician 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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COVID-19

During the first quarter of 2020, the world was exposed to the highly contagious and virulent coronavirus that causes COVID-19. On March 10, 2020, Governor Baker Massachusetts declared a state of emergency across the commonwealth due to the ongoing coronavirus pandemic which impacted the public health and economy in almost every country. Within the first year of the COVID-19 pandemic, Massachusetts alone recorded over 560,000 cases and over 16,000 COVID-19 related deaths.¹

Federal and state public health agencies, and other government and business leaders took necessary and appropriate steps to safeguard the general public and well-being of the Commonwealth's citizens. Recognizing that the coronavirus imposed unique risks that Massachusetts had not faced for at least a generation, new orders were developed to protect patients and their caregivers from the risk of contracting the disease. Other emergency orders addressed the shortage of needed health care providers by allowing the expedited licensing of providers.

The Massachusetts Division of Insurance issued 30 COVID-19-related bulletins during 2020 to provide instructions to insurance carriers about how to facilitate individuals getting appropriate testing and treatment for the disease. Among these, the Division issued Bulletin 2020-08 for medical malpractice providers who play an essential role in our public health care system.

Medical malpractice coverage is necessary so that medical professionals can properly practice in accordance with the responsibilities of their profession and be secure that their Medical malpractice company will defend them in the case of a patient's lawsuit. In order to ensure that providers could deliver care where it was needed, in Bulletin 2020-08, the Division instructed all Medical Malpractice Carriers to review their existing coverage and/or coverage forms to ensure that such coverage provided appropriate flexibility for providers to work where they were needed. If coverage did not exist, carriers were instructed to file or add endorsements to their existing policies to ensure that coverage applies to health care professionals who are acting within the scope of their professional license when they respond to the COVID-19 public health crisis, whether within Massachusetts or in another state.

Medical malpractice carriers' actions ensured that providers could deliver COVID-19 care where needed. It is not known in this report whether COVID-19 had any impact on the number of medical malpractice claims.

¹ <https://www.wbur.org/news/2021/03/10/coronavirus-statewide-emergency-pandemic-anniversary-loss-figures>

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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 health care professionals and pay claims for damages.

Massachusetts requires that doctors have medical malpractice coverage² 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.³

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 professional may not refuse to provide coverage for any such medical professional. 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 2020 include the following:

- Total medical malpractice premiums, consisting of revenue from licensed insurance companies, risk retention groups, and surplus lines companies, was relatively flat, increasing by approximately 0.1% to \$340.1 million in 2020 from \$339.7 million in 2019 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, decreased to 32.9% in 2020.
- Almost 75% of the medical malpractice market continues to be underwritten by two entities – 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 base 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 2020, the Massachusetts mean malpractice claim payment for physicians was the eighth highest in the country, as seen in Figure 13.

Massachusetts Health Care Professionals

Number of Professionals

² 243 CMR 2.07(16).

³ M.G.L. c. 175, §193U.

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For 2020, there were approximately 333,153 individual health care professionals licensed by state agencies to practice in the following categories:⁴

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 1,791 facilities and programs were licensed to operate as the following types of entities:⁵

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,⁶ the Bureau of

⁴ Numbers of current licensed health care professionals as reported by the following agencies: Massachusetts Board of Registration in Medicine; Bureau of Health Professions Licensure; and Division of Occupational Licensure. The reported statistics reflect current 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, not including satellites, as reported online by the Division of Health Care Facility Licensing and Certification in the Department of Public Health. While the reported statistics reflect the number licensed, the number actively operating may be lower.

⁶ The Board of Registration in Medicine coordinates the licensing of Medical Doctors (MDs), Doctors of Osteopathy (DOs), and acupuncturists.

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Health Professions 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 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 is appropriate based upon available information, adverse outcomes may occur, with long-term financial consequences. Medical malpractice coverage pays the cost to defend against claims and, if unsuccessful, 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 professional or facility in that category. The statutory categories include.¹¹

- 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.

Medical doctors and advanced practice registered nurses with direct patient care responsibilities are required as a condition of licensure to have medical malpractice coverage sufficient to protect against claims of at least \$100,000 per claim and \$300,000 per year.¹² Limited liability companies or limited

⁷ 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.

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/Professionals, 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.

¹¹ 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.

¹² 244 CMR 4.09; 243 CMR 2.07(16)(b).

liability partnerships offering Chiropractic care are required to maintain 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 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.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 subsequently 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 more accurately determine their liabilities and stabilize their rating practices.¹⁶

Licensed Insurance Companies

Medical malpractice insurance companies must be licensed by the Division of Insurance. 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 2020, licensed medical malpractice insurance companies wrote \$111.7 million in direct premium; this is

¹³ 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.”

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, Aug 2003, p. 10.

¹⁶ 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.

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about 0.8% of the premium written for all admitted major lines property and casualty coverage. (Figure 1)

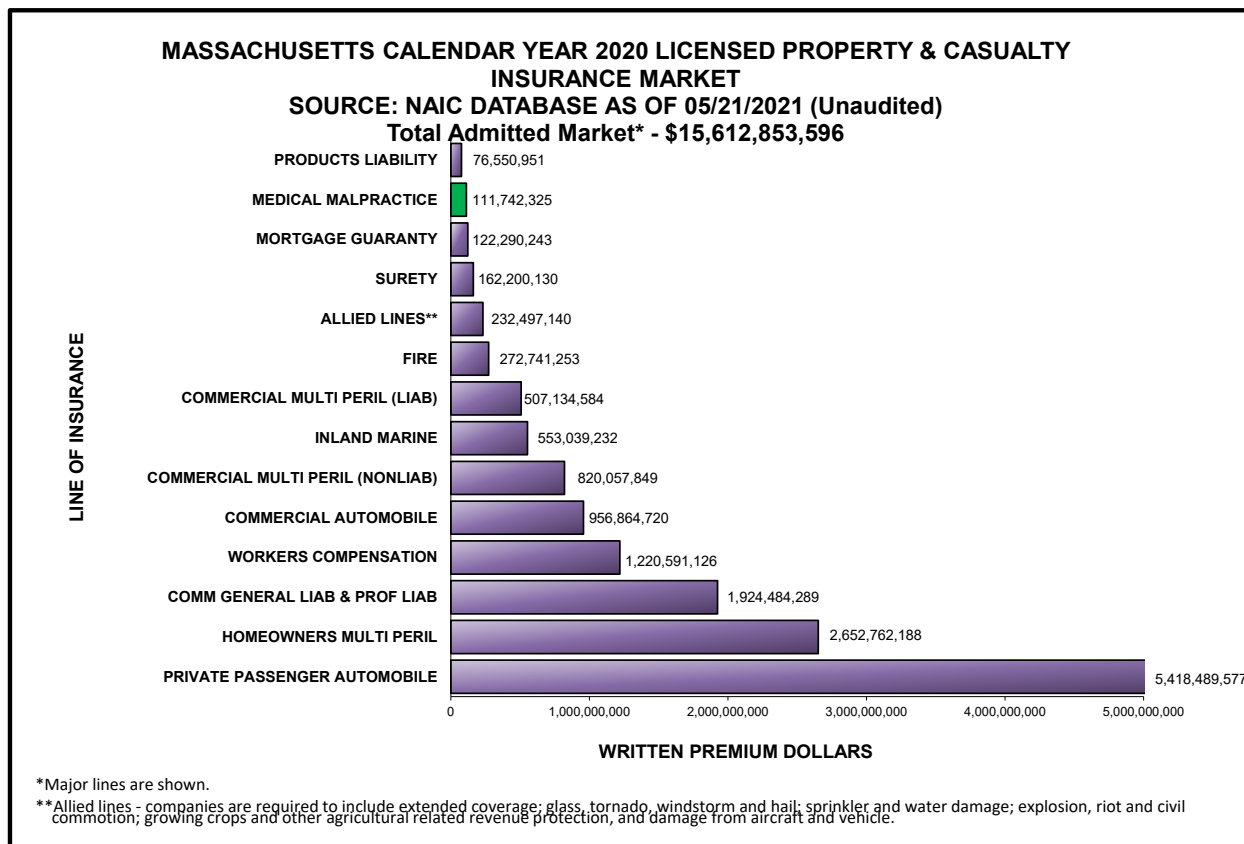


Figure 1

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 2020 is in Appendix A-1.

¹⁷ The Division’s website indicates the companies that write each of the designated classes of providers:
<https://www.mass.gov/service-details/medical-malpractice-insurance>

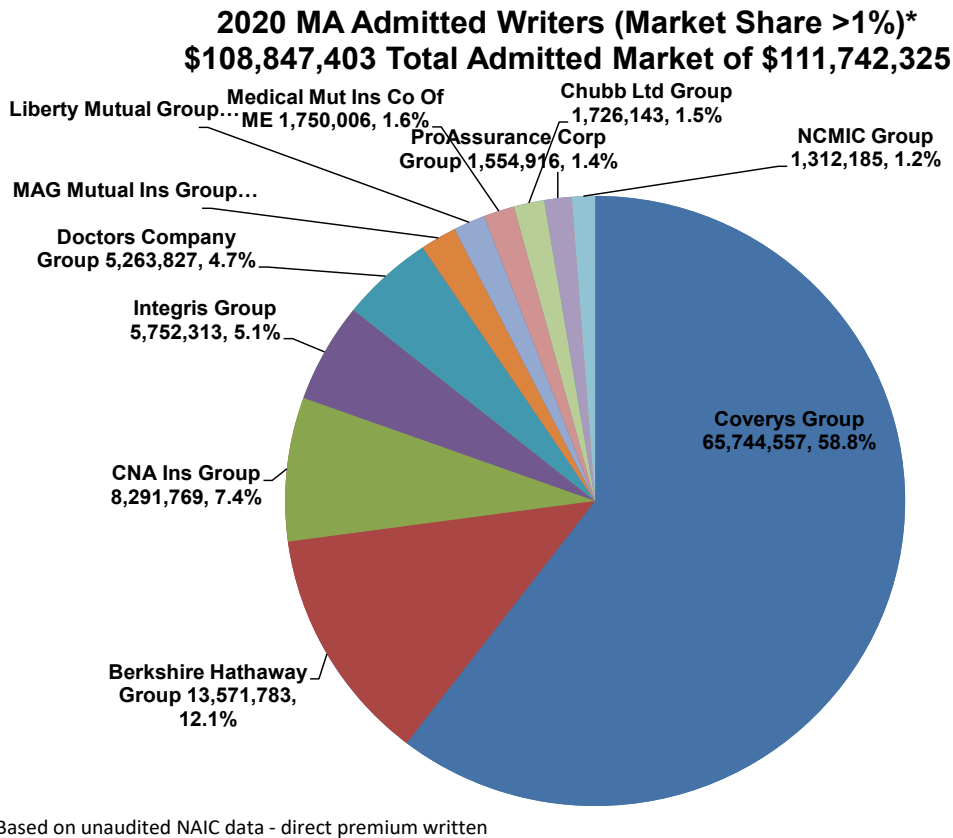
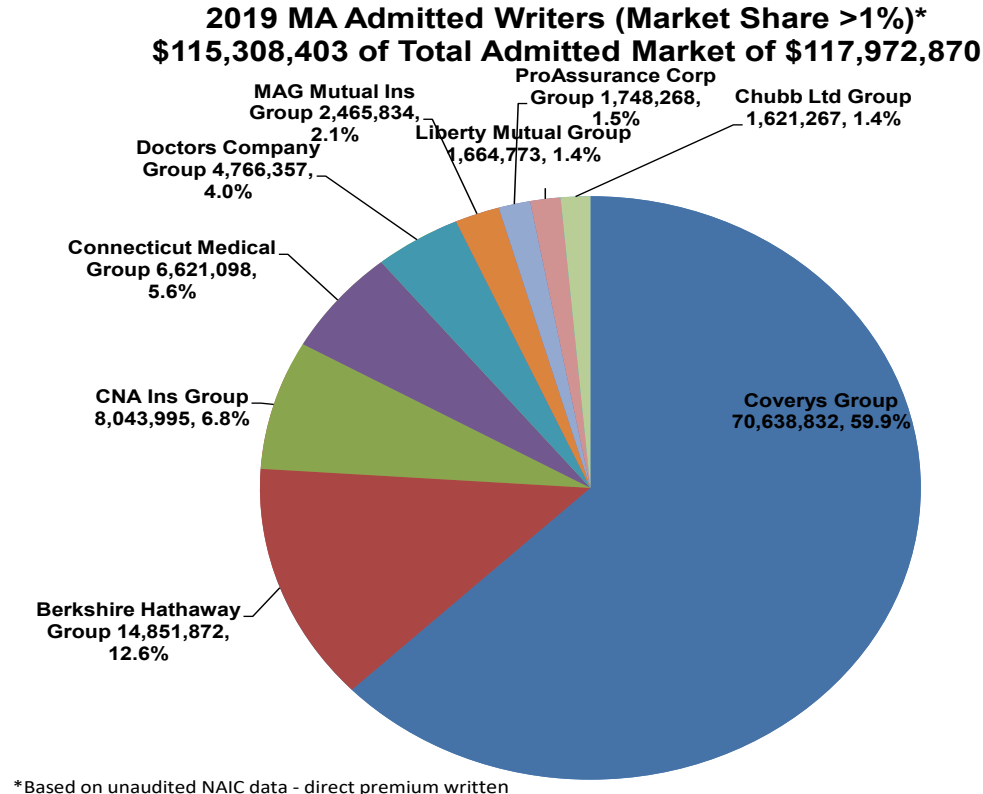


Figure 2

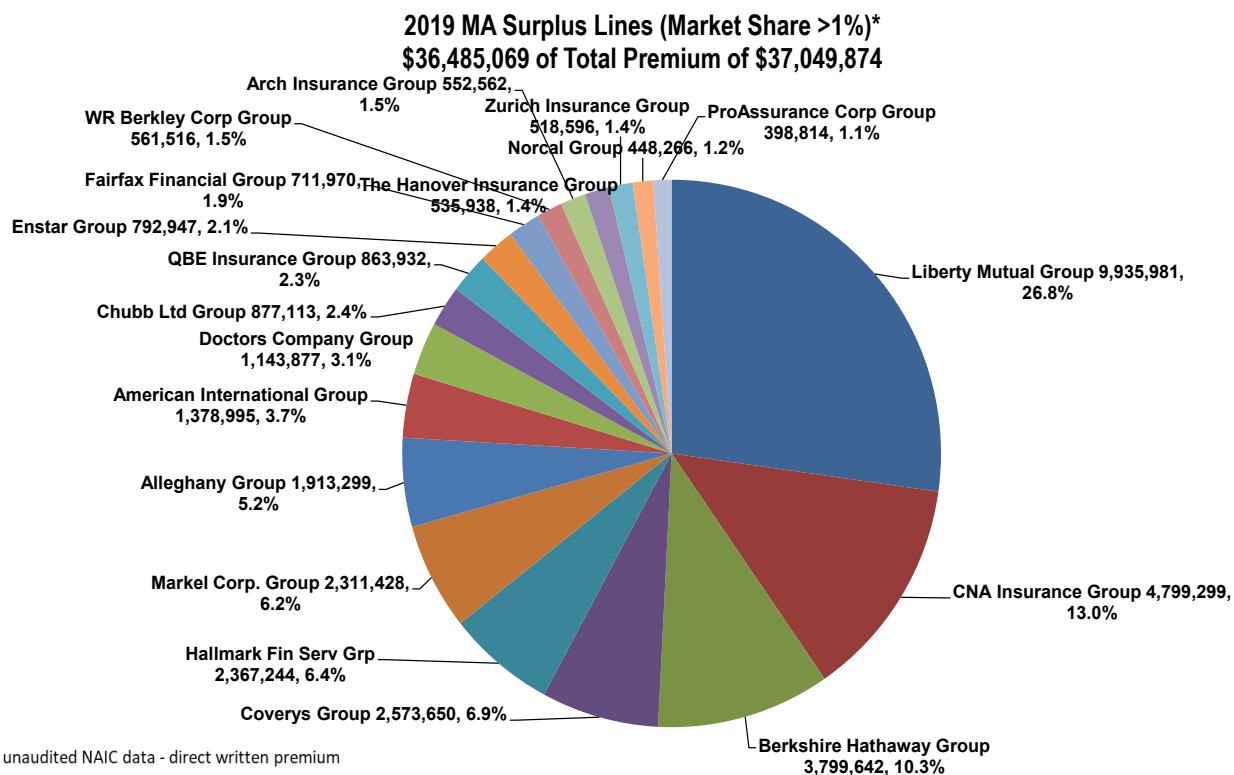
As noted in Figure 2 above, the Coverys Group, composed of Medical Professional Mutual Insurance Company, ProSelect Insurance Company and Preferred Professional Insurance Company, wrote the predominant share of 2020 medical malpractice insurance, collecting approximately 58.8% of total insurance premium. This is a decrease from its 59.9% market share of the market in 2019.

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 2020 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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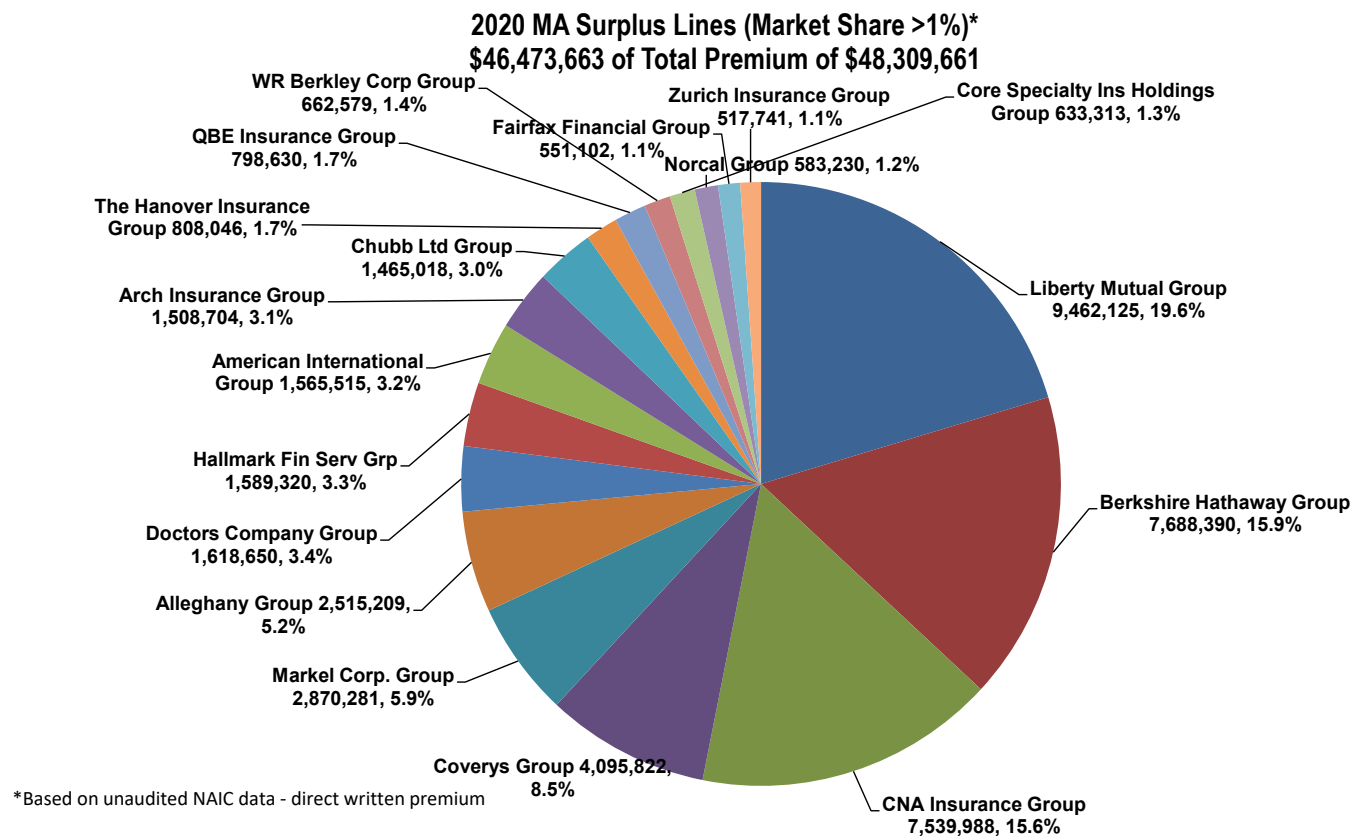


Figure 3

The largest medical malpractice carrier in the surplus lines market in 2020 was Liberty Mutual Group, accounting for 19.6% of the 2020 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

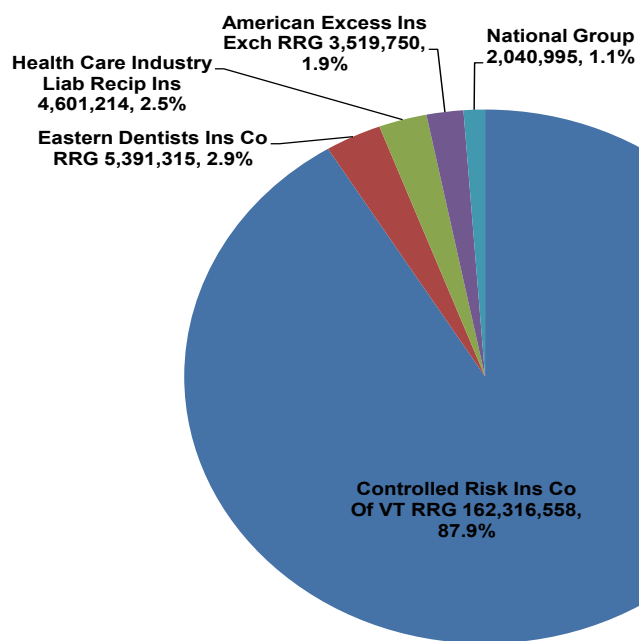
¹⁹ Liability Risk Retention Act of 1986, 15 U.S.C. § 3901.

²⁰ 15 U.S.C. § 3902.

²¹ 15 U.S.C. § 3901.

²² 15 U.S.C. § 3901.

**2019 MA Risk Retention Groups (Market Share >1%)*
\$177,869,832 of Total Premium of \$184,670,535**



*Based on unaudited NAIC data - direct premium written

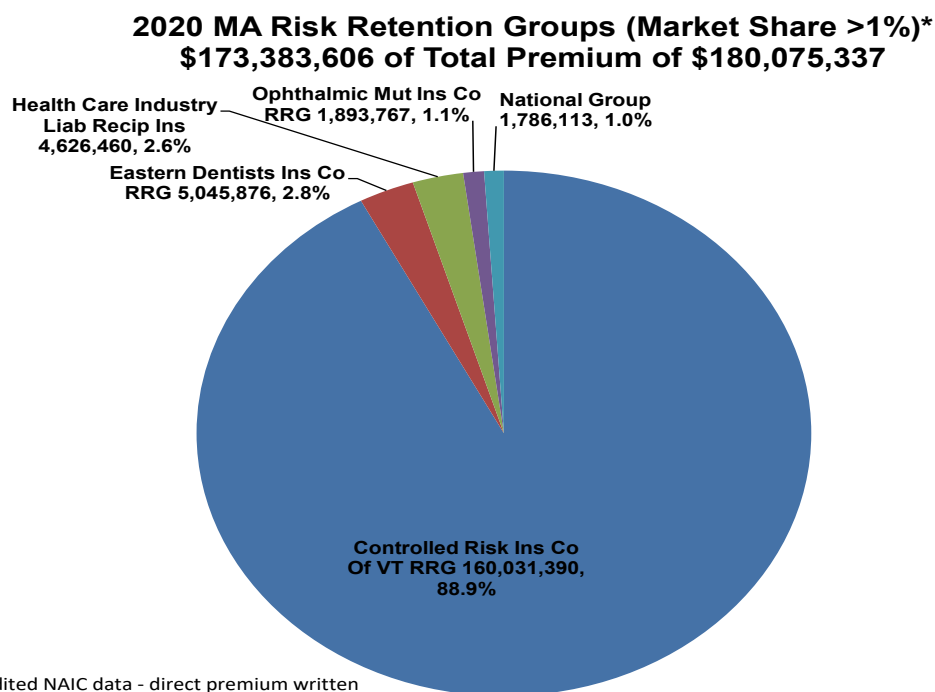


Figure 4

The Controlled Risk Insurance Company of Vermont RRG – also known as CRICO - has the predominant share of the RRG medical malpractice market, collecting 88.9% of premium for 2020. (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 many underwriting classifications based on level of risk exposure.

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.	

The four next largest RRGs collectively account for 7.4% of the market, some of which write coverage for specialty providers. The list of RRGs writing medical malpractice coverage in 2020 is in Appendix A-3.

Shares of the Market

During 2020, insurers, surplus lines carriers, and RRGs together wrote \$340.1 million of medical malpractice premium, with 32.9% written by insurance companies, 52.9% written by RRGs and 14.2% written by surplus lines carriers. In 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. (Figure 5)

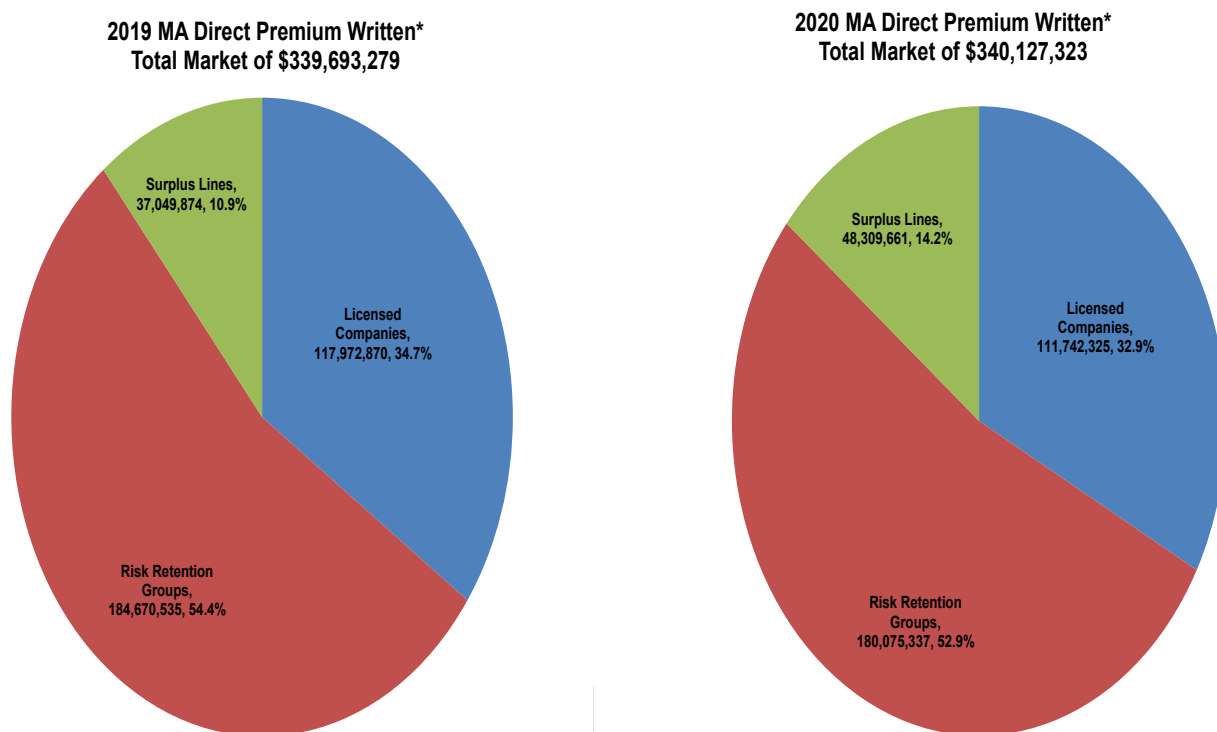


Figure 5

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In 2014, 47.3% was written by insurance companies, 44.8% was written by RRGs, and 7.9% was written by surplus lines carriers. (Figure 6)

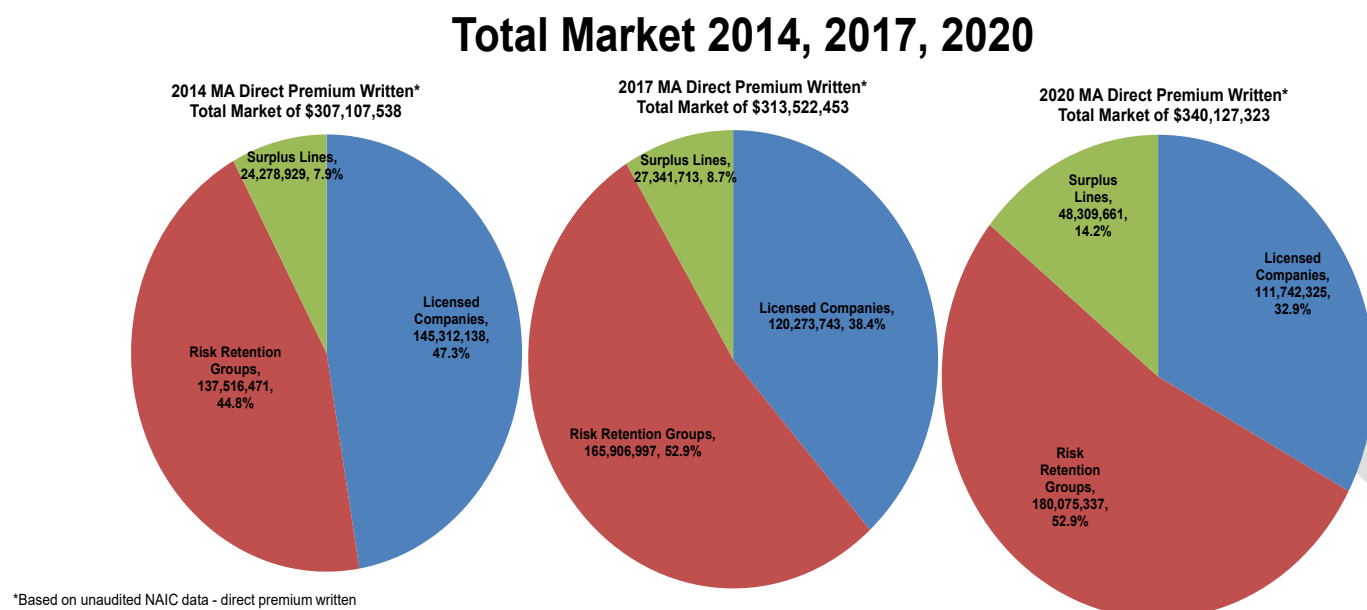


Figure 6

Financial Results for Insurance Carriers

Premiums

Financial results for providers of medical malpractice insurance include premiums earned during the calendar year. Between calendar years 2019 and 2020, total earned premium for insurance companies, RRGs and surplus lines carriers combined increased 0.4%, compared with a 4.1% increase in earned premiums between calendar years 2018 and 2019.

Licensed insurance companies reported earned premium of \$111.6 million in 2020, which is less than the \$119.2 million in medical malpractice premium in 2019 and less than the \$122.5 million in medical malpractice premium in 2018. RRGs had earned premium of \$181.6 million in 2020, which was less than the \$183.3 million in 2019 and more than the \$171.5 million premium in 2018. Surplus lines carriers had earned premium of \$42.8 million in 2020 which was more than the \$32.0 million premium in 2019 and more than the \$27.5 million in 2018. (Figure 7)

The rate of premium change over the period 2018 to 2020 varied considerably by the type of insurance provider. The average change in the annual premium²⁴ for licensed insurance companies decreased by 1.5%, as compared to an increase of 1.0% for RRGs, and an increase of 7.6% for surplus lines insurers.

²⁴ Average annual change is calculated as the annualized change in earned premiums from 2014 to 2020 using the premiums shown in Figure 7.

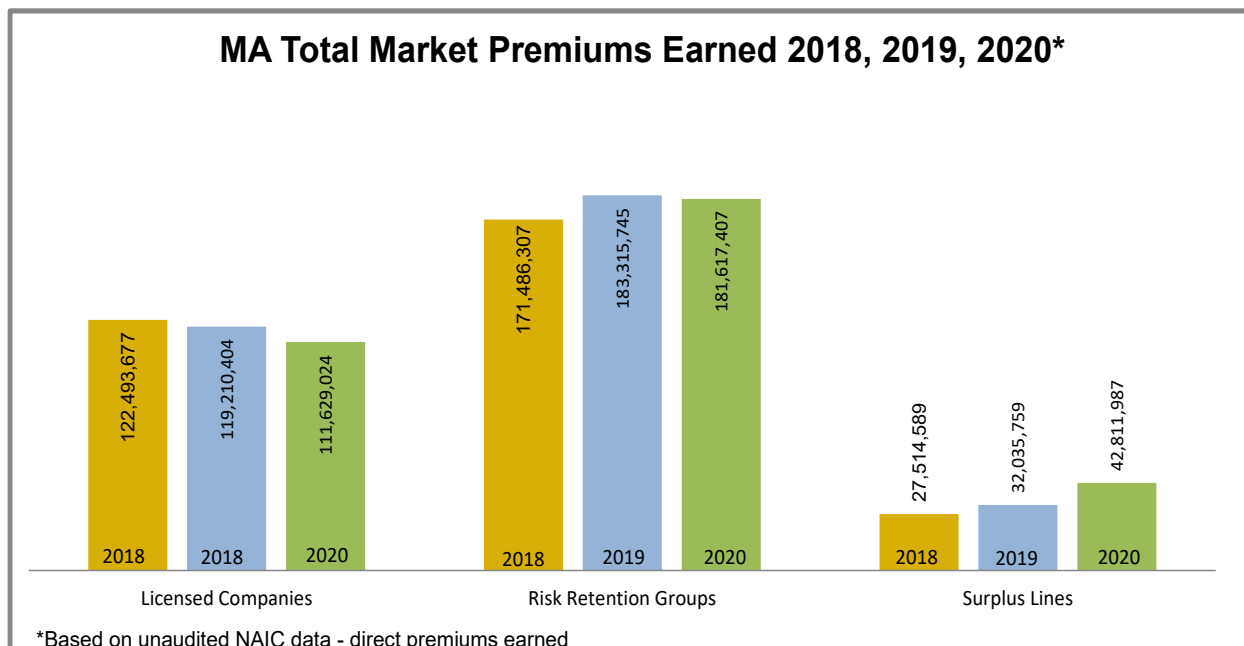


Figure 7

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 incurred claims 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 years²⁵ 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.

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.

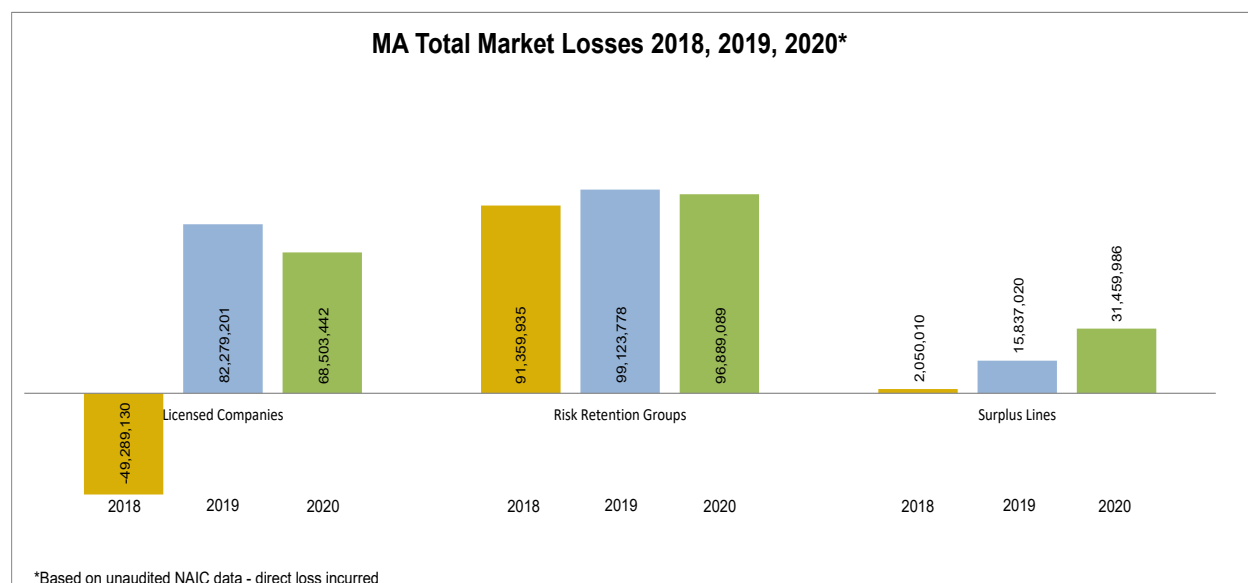


Figure 8

Massachusetts licensed insurance companies reported total incurred losses of \$68.5 million in 2020, which is less than \$111.6 million collected in earned premiums.

On an industry basis, the \$68.5 million in 2020 losses is less than incurred losses in 2019. These losses of \$68.5 million represent the sum of losses paid during 2020 and the change in reserves from year-end 2019 to year-end 2020. 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 (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. The negative value of incurred losses resulted from a change in reserving methodology by one carrier that caused a large decrease in IBNR reserves for past years.

Loss Ratios

Loss ratios (incurred losses divided by earned premium) reflect the proportion of premium dollars used to pay claims. 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. (Figure 9)

Please note that the low incurred loss ratio in 2018 reflects the impact of a change in reserving practice on prior years' loss reserves made by a single major carrier.

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.

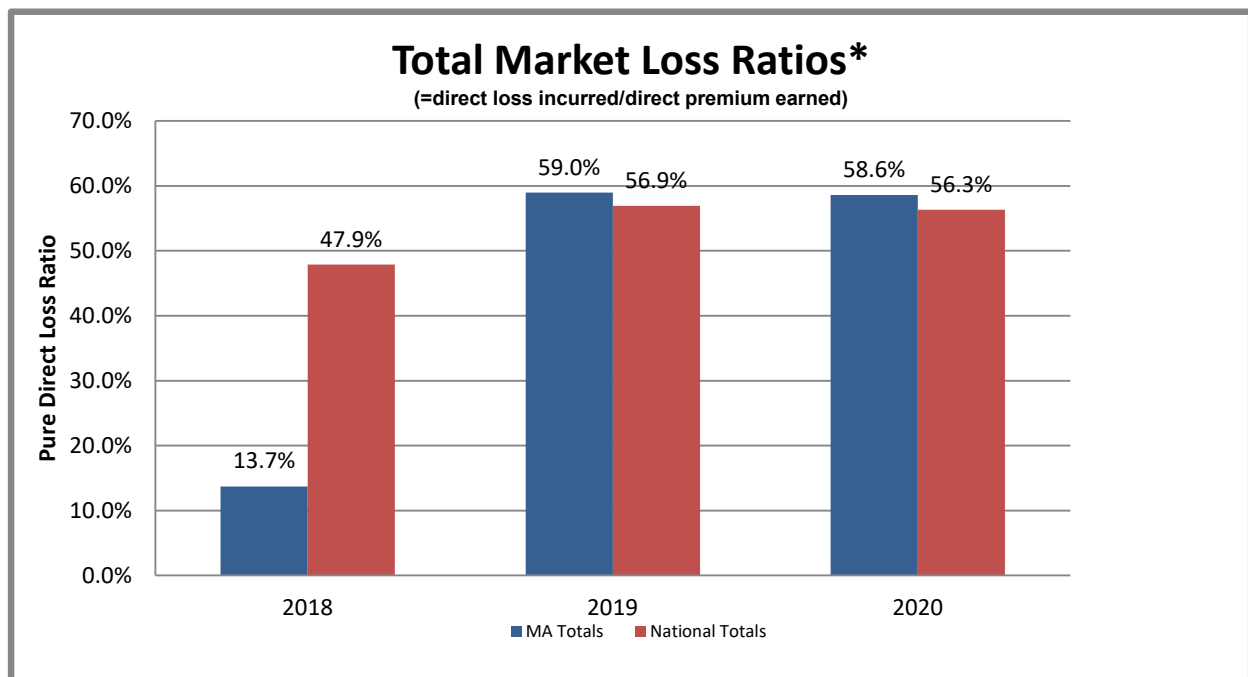


Figure 9

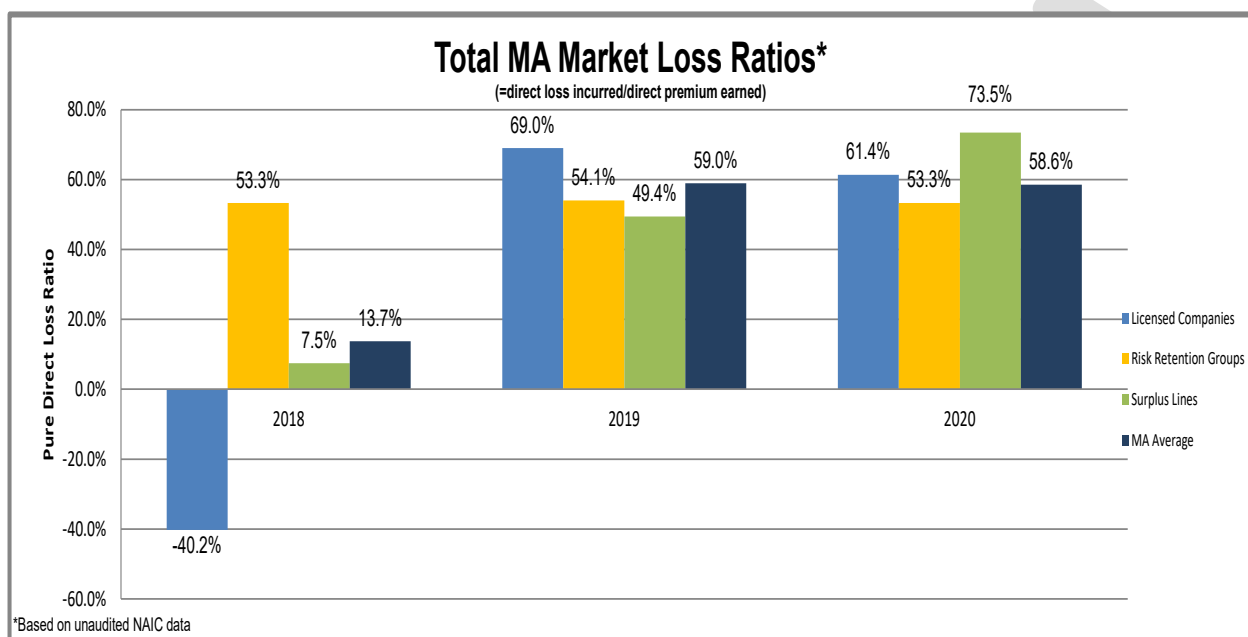


Figure 10²⁷

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

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. 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, because 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 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.

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

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Calculation of Adjusted Operating Ratios - Licensed Companies								
	(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)
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	Adjusted Operating Ratio	Average Return on Premium
2020	\$111,681	52.8%	19.1%	14.6%	7.6%	19.1%	75.0%	25.0%
2019	\$119,211	39.1%	22.2%	14.5%	6.1%	19.5%	62.3%	37.7%
2018	\$122,505	34.0%	21.9%	15.1%	6.5%	18.5%	59.1%	40.9%
2017	\$125,679	47.6%	22.7%	14.1%	8.3%	17.4%	75.2%	24.8%
2016	\$133,094	44.3%	24.7%	16.2%	6.2%	17.1%	74.4%	25.6%
2015	\$141,763	39.8%	16.4%	13.4%	1.4%	17.1%	53.8%	46.2%

(A) NAIC database, licensed companies only

(B) NAIC database, calendar year direct incurred loss & DCCE adjusted by a factor of 1.071 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) = (B) + (C) + (D) + (E) - (F)

(H) = 1.0 - (G)

Figure 11

Premiums for Medical Malpractice Coverage

Insurance companies develop premiums to pay future expected claims 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 20.5% of the total market, and 58.8% of the admitted market. As such, its 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 (the largest MA licensed writer under the Coverys Group) illustrates that medical malpractice rates rose quickly in the early 2000s. Between 2000 and 2004, its physician and surgeon average rates increased each year by at least 9.0%. After 2004, Medical Professional's base rate changes were much more moderate and ranging from -2.3% to 5.3% per year. (Figure 12)

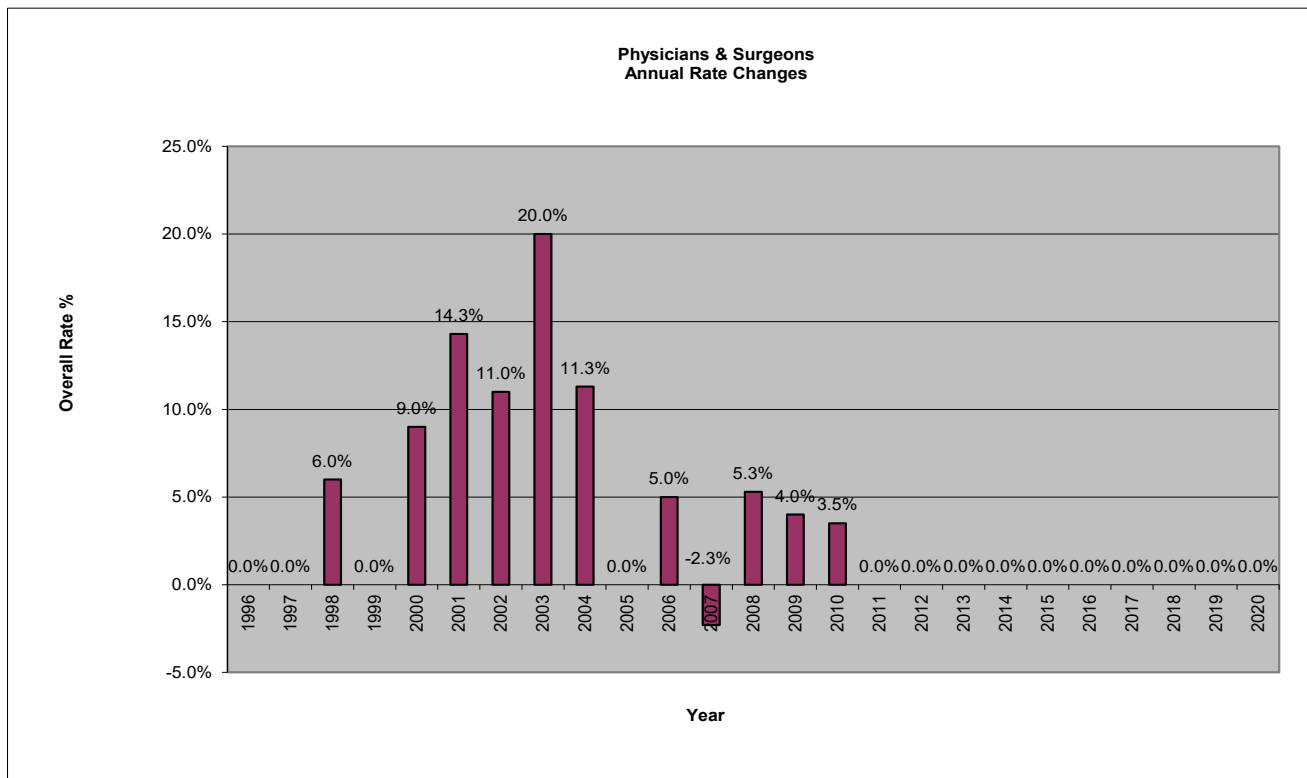


Figure 12

The rate change history of the largest admitted writer under the Coverys Group, Medical Professional Mutual Insurance Company, suggests that its financial results have been favorable since there have been no increases for the past 10 years in the base rates.

Average Claim Costs for Medical Malpractice Coverage

Massachusetts has higher claim payouts than other states. In 2020, mean Massachusetts medical malpractice payment made on behalf of physicians was \$817,790,663,276, eighth in the country.

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National Practitioner Data Bank Medical Malpractice Payments and Rank by Jurisdiction for 2020

State	2020 Mean Payment	Rank
AK	\$651,881	9
AL	\$540,844	14
AR	\$372,633	34
AZ	\$449,781	26
CA	\$290,257	44
CO	\$395,326	32
CT	\$693,094	6
DC	\$505,241	19
DE	\$499,756	20
FL	\$317,516	42
GA	\$650,732	10
HI	\$514,300	18
IA	\$676,764	7
ID	\$600,471	11
IL	\$839,881	3
IN	\$253,774	47
KS	\$207,866	49
KY	\$516,507	17
LA	\$325,520	40
MA	\$663,276	8
MD	\$467,079	25
ME	\$533,779	15
MI	\$257,669	46
MN	\$730,320	5
MO	\$368,864	35
MS	\$447,366	27
MT	\$326,201	39
NC	\$516,708	16
ND	\$154,375	51
NE	\$410,430	31
NH	\$469,625	23
NJ	\$491,208	21
NM	\$350,722	38
NV	\$295,192	43
NY	\$478,241	22
OH	\$852,560	2
OK	\$205,749	50
OR	\$430,367	30
PA	\$433,078	29
RI	\$547,031	13
SC	\$356,056	37
SD	\$789,799	4
TN	\$321,287	41
TX	\$237,572	48
UT	\$360,913	36
VA	\$467,154	24
VT	\$863,545	1
WA	\$547,415	12
WI	\$394,435	33
WV	\$439,949	28
WY	\$270,000	45

Note: Year is malpractice payment year.

Figure 13²⁹

²⁹ Figure 13's data is from the National Practitioner Data Bank.

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Premiums Compared to Those of Other States

Coverys submitted materials to reflect its Massachusetts rates as of October 1, 2021. The rates that the company charges, generally, in Massachusetts are not among the highest of for the noted specialties. (Figure 14)

COVERYS GROUP'S (FORMERLY PROMUTUAL GROUP) MATURE RATES BY CLASS AS OF 10/1/2021 FOR CLAIMS MADE POLICIES*						
25 HIGHEST MASSACHUSETTS COMPARED TO RATES IN OTHER NORTHEAST STATES						
Class Description	Massachusetts Effective 7/1/2021	Connecticut Effective 12/1/2021	Rhode Island Effective 4/1/2021	N. Hampshire Effective 11/1/2021	New Jersey Effective 7/1/2021	PA-Territory 4 Effective 11/1/2021
80152 Neurology - incl children, major surgery	119,057	147,250	110,483	126,643	121,168	110,641
80153 OB, gynecology, major surgery	111,351	163,087	122,719	85,991	131,473	116,782
80168 OB, major surgery	111,351	163,087	122,719	85,991	131,473	116,782
80154 Orthopedic incl. spinal, major surgery	95,673	60,012	80,510	73,485	84,091	82,996
80146 Vascular, major surgery	63,401	80,318	68,262	64,103	68,802	67,906
80150 Cardiovascular disease, major surgery	63,401	80,318	83,709	64,103	70,010	63,741
80170 Head & neck, major surgery	63,401	80,318	50,608	56,286	70,010	63,741
80171 Traumatic, major surgery	63,401	80,318	68,262	64,103	70,010	63,741
80354 Orthopedic excl. spinal, major surgery	51,734	43,248	64,436	56,286	68,802	67,906
80141 Cardiac, major surgery	51,681	60,012	48,933	64,103	70,010	63,741
80143 General (NOC), major surgery	51,681	100,913	48,933	56,833	70,010	63,741
80144 Thoracic, major surgery	51,681	80,318	50,608	64,103	68,802	67,906
80155 Plastic - otorhinolaryngology, major surg.	51,681	80,318	68,262	53,158	70,010	63,741
80156 Plastic (NOC), major surgery	51,681	80,318	68,262	53,158	70,010	63,741
80157 Emergency med, incl major surg (brd cert)	51,681	43,248	48,933	56,286	43,437	45,405
80166 Abdominal, major surgery	51,681	60,012	48,933	53,158	70,010	63,741
80167 Gynecology, major surgery	51,681	60,012	48,933	56,286	70,010	63,741
80169 Hand, major surgery	51,681	60,012	46,361	53,158	70,010	63,741
80184 Bariatric, major surgery	51,681	100,913	48,933	53,158	70,010	63,741
80465 Emergency med, inc major surg (no brd cert)	51,681	43,248	48,933	N/A	43,437	45,405
80102 Emergency med, no major surg (brd cert)	35,489	39,644	33,483	23,234	35,106	35,688
80464 Emergency med, no major surg (no brd cert)	35,489	39,644	33,483	23,234	35,106	35,688
80101 Bronco-Esophagology, major surgery	34,392	43,248	28,339	37,523	28,637	28,263
80103 Endocrinology, major surgery	34,392	43,248	28,339	37,523	21,558	21,277
80104 Gastroenterology, major surgery	34,392	43,248	28,339	26,580	28,637	28,263

*Coverys's 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 in the lower end of rates reported for five other Northeast Region states but over \$25,000 more than what is reported for rates for obstetricians in New Hampshire.

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 helped address some of the Division's 2007 recommendations by establishing 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" established 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 made 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 lowered 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

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, generally, Massachusetts' premiums compared to that of other states, are now lower now than that of other states.

The Division's medical malpractice reports have analyzed different reasons that medical malpractice premiums had been high and over the years proposed ideas to reform the tort or medical systems. Since its first medical malpractice report in 2007, the Division has considered 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 build 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.

³¹ According to direct written premium reported to the National Association of Insurance Commissioners.

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.

DRAFT

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 2020:³¹

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 Casualty Company of Reading, Pennsylvania	PA
American Home Assurance Company	NY
Aspen American Insurance Company	TX
Beazley Insurance Company, Inc.	CT
Berkshire Hathaway Specialty Insurance Company	NE
Campmed Casualty & Indemnity Company, Inc.	NH
Church Mutual Insurance Company	WI
Continental Casualty Company	IL
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
Hartford Fire Insurance Company	CT
Hudson Insurance Company	DE
Integris Insurance Company	CT
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
National Union Fire Insurance Co of Pittsburgh, PA	PA
NCMIC Insurance Company	IA
Pharmacists Mutual Insurance Company	IA
Preferred Professional Insurance Company	NE
ProAssurance Indemnity Company, Inc.	AL
ProAssurance Insurance Company of America	IL
Professional Solutions Insurance Company	IA
ProSelect Insurance Company	NE
State Farm Fire and Casualty Company	IL
TDC National Assurance Company	OR

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 2020:³²

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
Hilltop Specialty Insurance Company	NY
Hudson Excess Insurance Company	DE
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
Navigators Specialty Insurance Company	NY
NORCAL Specialty Insurance Company	TX
Princeton Excess & Surplus Lines Insurance Company	DE
ProAssurance Casualty Company	MI
Professional Security Insurance Company	AZ
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 2020:³³

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
NCMIC RRG, Inc.	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.