

**Massachusetts Division of Insurance
Medical Malpractice Insurance Report
For the 2011 Calendar Year**

Joseph G. Murphy
Commissioner of Insurance

Acknowledgements

This report on the market for medical malpractice insurance in Massachusetts was prepared by Kevin Beagan, Matthew Mancini, Gerald Condon, Cara Blank, Daniel M. D’Amico and staff from both the Health Care Access Bureau and State Rating Bureau within the Division of Insurance (“Division”).

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 coverage¹ and that insurance companies make medical malpractice coverage available on an equal basis to all doctors and certain other licensed healthcare providers willing to pay for it.² 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 2011 include the following:

- Total medical malpractice insurance premiums decreased approximately 0.2% to \$314 million in 2011 from \$315 million in 2010.
- 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 54.1% since 2010.
- 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 40% 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 2011.

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. The 2011 national mean obstetric-related malpractice claim of \$606,809 exceeds the national median obstetric-related malpractice claims by about 38%.

¹ 243 CMR 2.07(16).

² M.G.L. c .175, §193U.

Massachusetts' Health Care Professionals

Number of Professionals

During 2011, there were almost 258,000 individual health care professionals that were licensed by state agencies to practice in the following licensing categories:³

139,649	Nurses
23,023	Social Workers
33,704	Medical and Osteopathic Doctors
21,385	Allied Health Providers (Therapists, Assistants and Athletic Trainers)
6,991	Dentists
6,571	Allied Mental Health Providers
5,375	Psychologists
6,218	Audiologists, Speech Pathologists and Assistants
2,894	Respiratory Care Specialists (full and limited licenses)
2,171	Chiropractors
2,314	Dietitians/Nutritionists
1,600	Dispensing Opticians
2,465	Physician Assistants
1,587	Optometrists
1,024	Acupuncturists
553	Podiatrists
180	Hearing Instrument Specialists
108	Certified Health Officers
107	Perfusionists (full and provisional licenses)

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

514	Nursing Homes/Rest Homes
295	Clinics
167	Home Health Care Agencies
186	Mammography Facilities
140	Hospitals (acute care and non-acute)
326	Ambulance services
74	Hospices

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

³ Numbers of licensed health care professionals as reported to the Division of Insurance by the following agencies: Massachusetts Board of Registration in Medicine for 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 the number of 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 Department of Professional Licensure and Division of Health Care Quality in the Department of Public Health. While the reported statistics reflect the number licensed, the number actively operating may be lower.

Medicine,⁵ the Division of Professional Licensure,⁶ 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 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:

- 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.¹⁰

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

⁶ 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.

⁷ 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.

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 as eligible when they are also eligible to be ceded to the medical malpractice reinsurance plan. Chapter 444 of the Acts of 2008 added Physical Therapists and Physical Therapist Assistants to M.G.L. c. 175, §193U.

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 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 year¹¹ and that chiropractors 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 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.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 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 (“Coverys” formerly “ProMutual”) with a board composed mainly of practicing or retired healthcare providers.¹⁶ Since its inception, Coverys has been one of the largest medical malpractice insurance providers in Massachusetts.

¹¹ 243 CMR 2.07(16).

¹² 233 CMR 4.04.

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 “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.

Medical Malpractice Insurance in the Massachusetts Market

Licensed Insurance Companies

Medical malpractice insurance companies may be licensed by the Division of Insurance with a designation 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 2011, licensed medical malpractice insurance companies wrote \$169.9 million in direct written premium; this is about 1.6% of the premium written for all property and casualty coverage. (Figure 1)

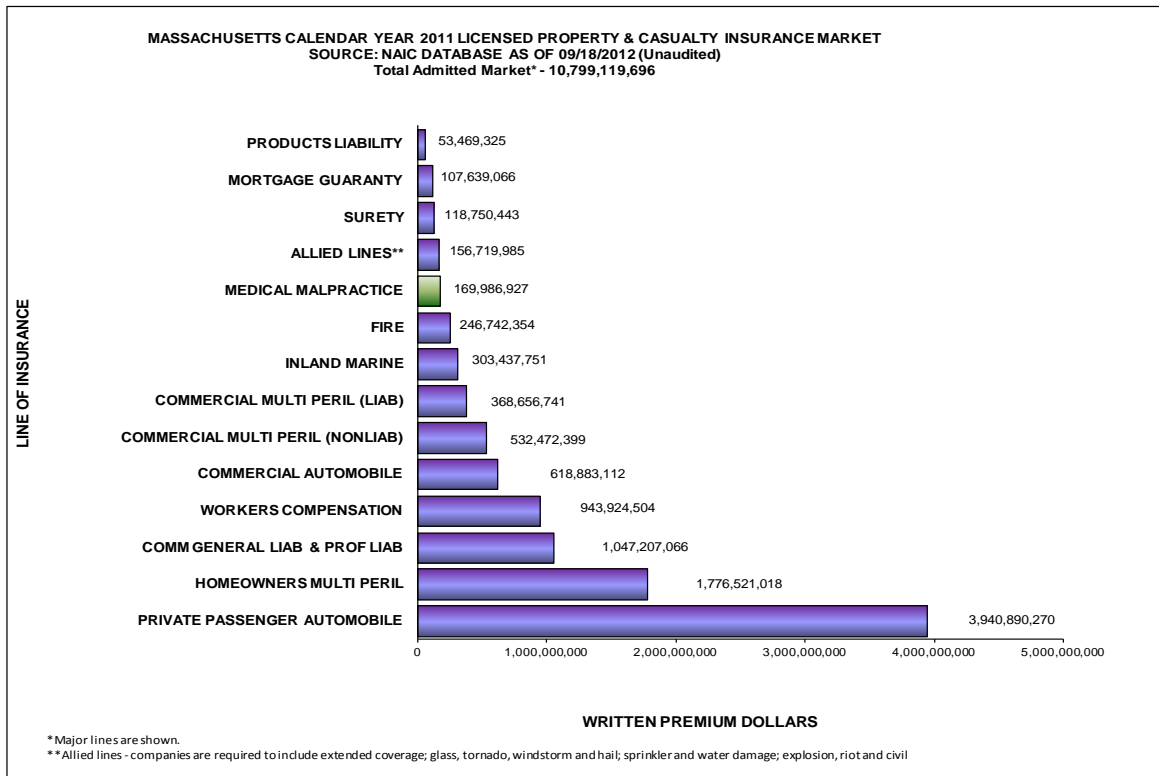


Figure 1

The Division of Insurance maintains a list of medical malpractice insurance companies on its 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 2011 is in A-1 on page 20.

¹⁷ The Division’s website indicates the companies that write to 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

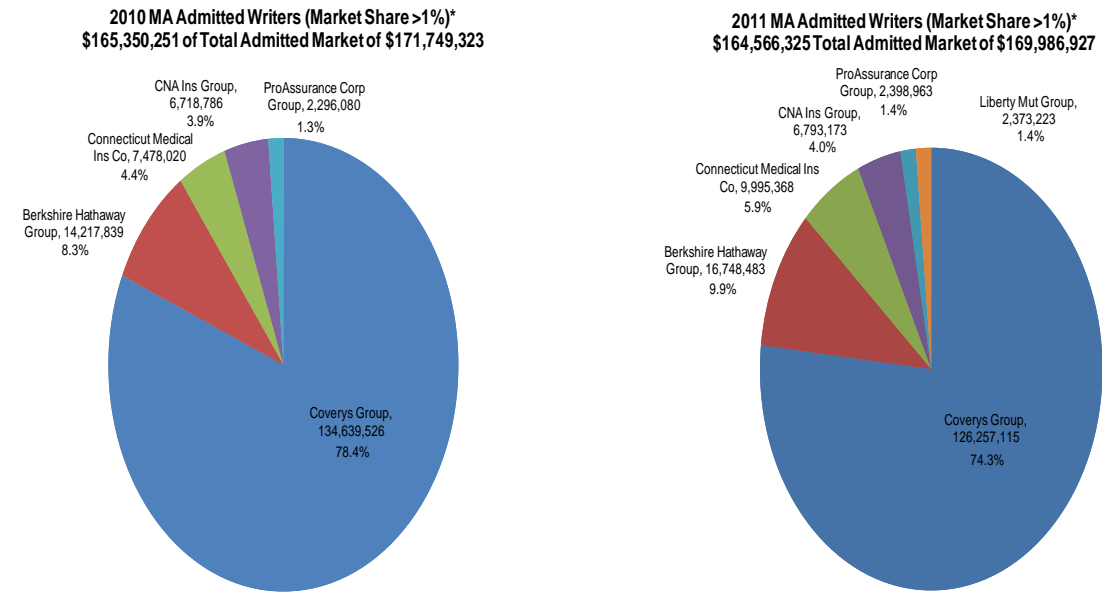


Figure 2

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 2011 medical malpractice insurance policies, collecting approximately 74.3% of total insurance premium. This is a decrease from its 78.4% market share of the market in 2010.

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 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 2011 is in Appendix A-2 on page 21.

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

Medical Malpractice Insurance in the Massachusetts Market

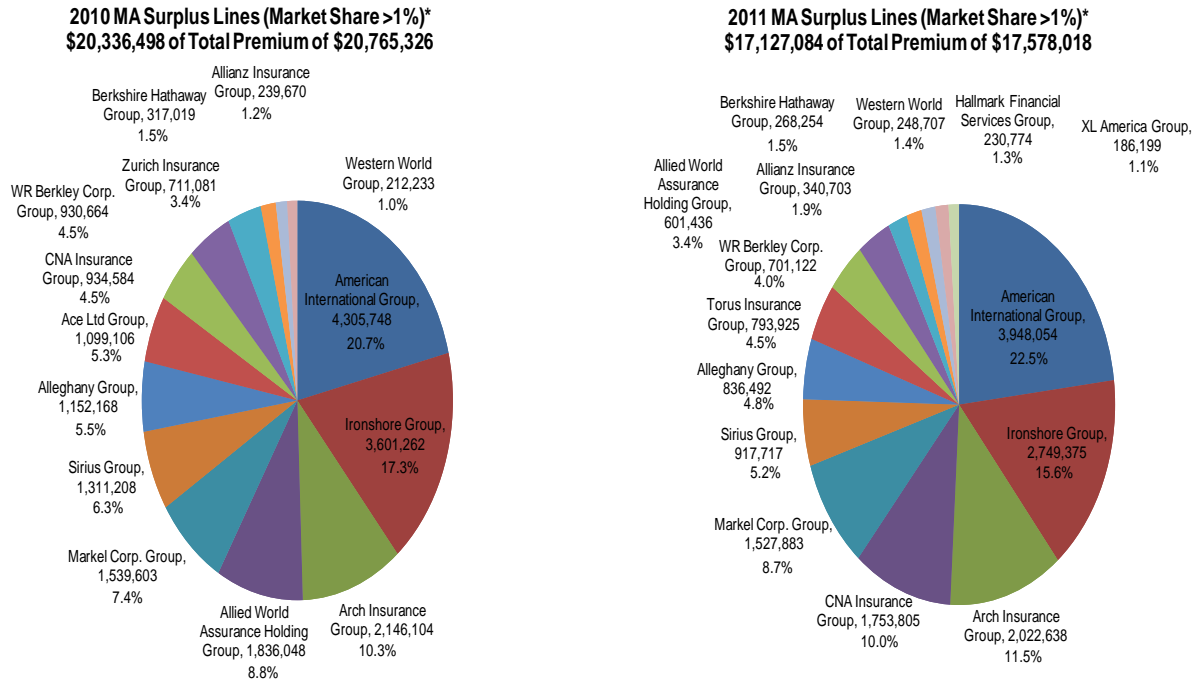


Figure 3

The largest medical malpractice carrier in the surplus lines market in 2011 was American International Group (including Lexington Insurance Company), accounting for 22.5% of the 2011 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 (“RRG”). Under federal law,¹⁹ RRGs 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.

¹⁹ 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

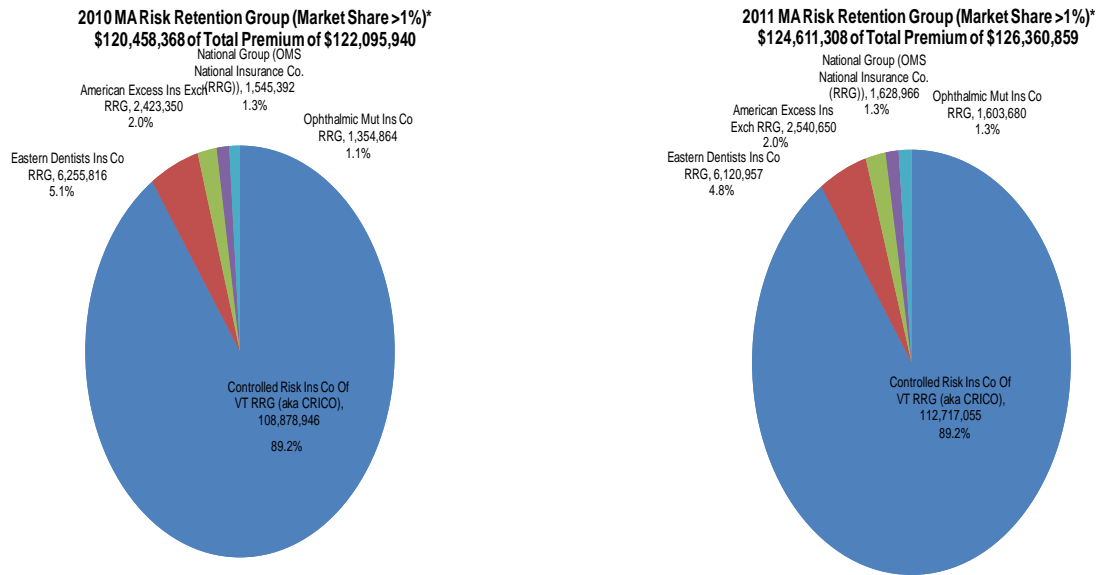


Figure 4

The Controlled Risk Insurance Company of Vermont RRG – also known as CRICO - has the predominant share of the RRG medical malpractice market, collecting 89.2% of premium in 2010 and 2011. CRICO was created in 1979 to provide professional liability coverage to the physicians and employees of Harvard-affiliated medical institutions.²⁰ 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.

²⁰ Founding members of the Risk Management Foundation eligible for CRICO coverage include:

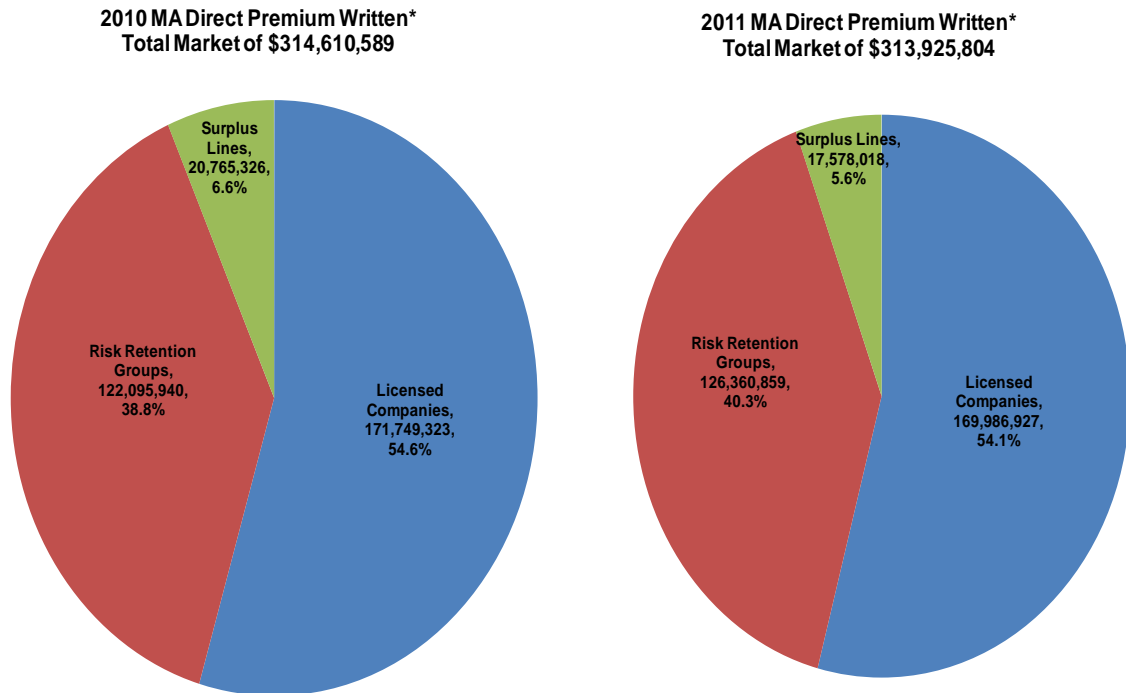
Beth Israel Hospital Association	Judge Baker’s Children Center, Inc.
Brigham and Women’s Hospital	Massachusetts Eye and Ear Infirmary
Cambridge Health Alliance	Massachusetts General Hospital
CareGroup, Inc.	Massachusetts Institute of Technology
Children’s Hospital Corporation	McLean Hospital
Dana-Farber 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

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 2011 is in Appendix A-3 on page 22.

Shares of the Market

During 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. In 2010, insurers, surplus lines carriers and RRGs together wrote \$314.6 million of medical malpractice premium, with 54.6% written by insurance companies, 38.8% written by RRGs and 6.6% written by surplus lines carriers. (Figure 5)



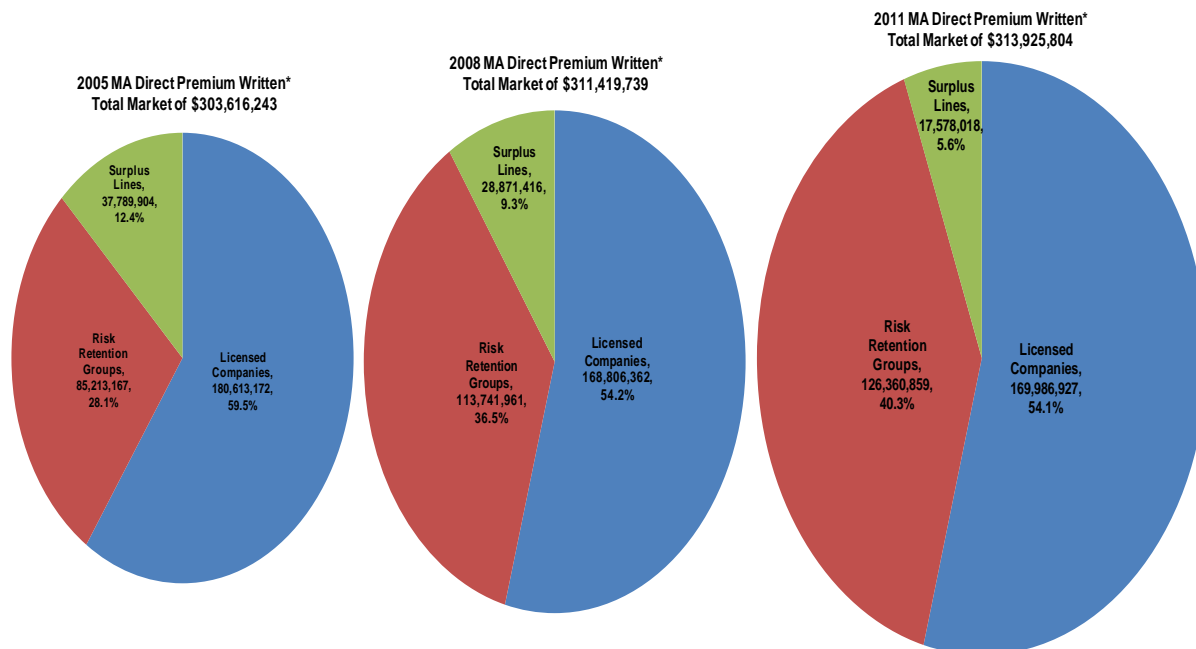
*Based on unaudited NAIC data - direct premium written

Figure 5

Medical Malpractice Insurance in the Massachusetts Market

In 2005, 59.5% was written by insurance companies, 28.1% was written by RRGs and 12.4% was written by surplus lines carriers. (Figure 6)

Total Market 2005, 2008, 2011



*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 2008 and 2011, total earned premium for insurance companies, RRGs and surplus lines carriers combined increased 2.9%, compared with a 6.5% increase in earned premiums between calendar years 2005 and 2008.

The rate of premium change over the period 2005 to 2011 varied considerably by the type of insurance provider. The change in the average annual premium²¹ for licensed insurance companies decreased by 0.5%, as compared to increases of 6.8% for RRGs, and decreases of 9.8% for surplus lines insurers. (Figure 7)

²¹ Average annual change is calculated as $(2011 \text{ earned premium} / 2005 \text{ earned premium})^{1/6} - 1.0$ using the premiums shown in Figure 7.

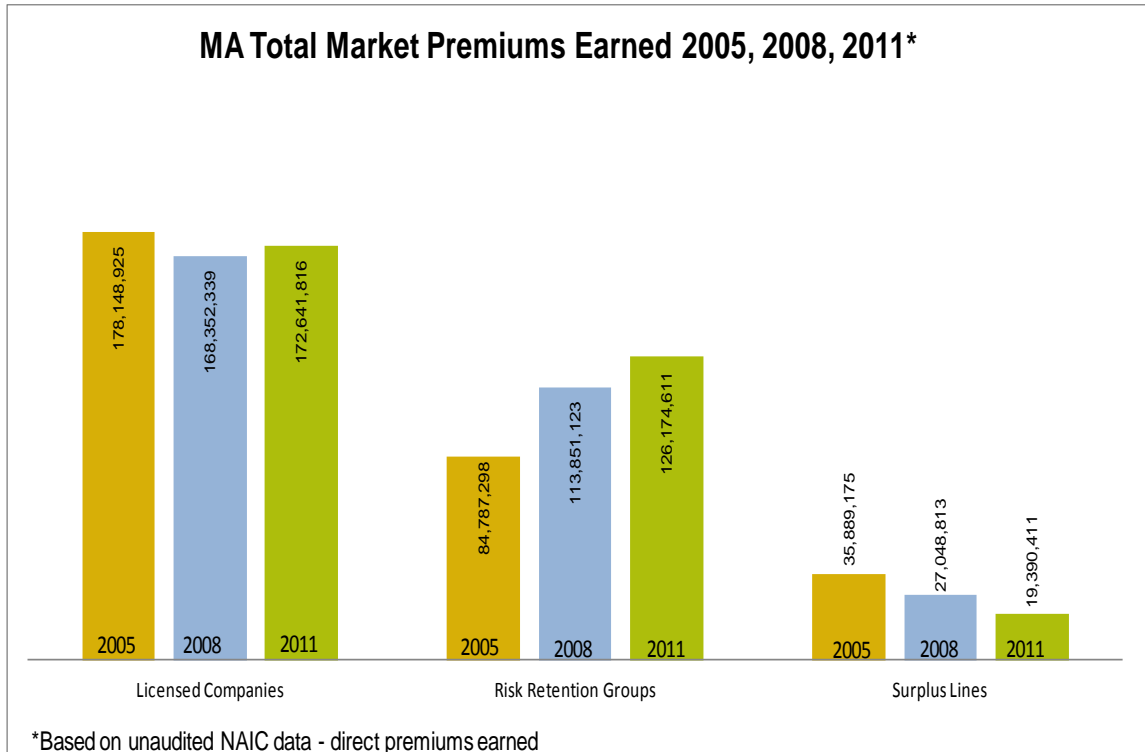


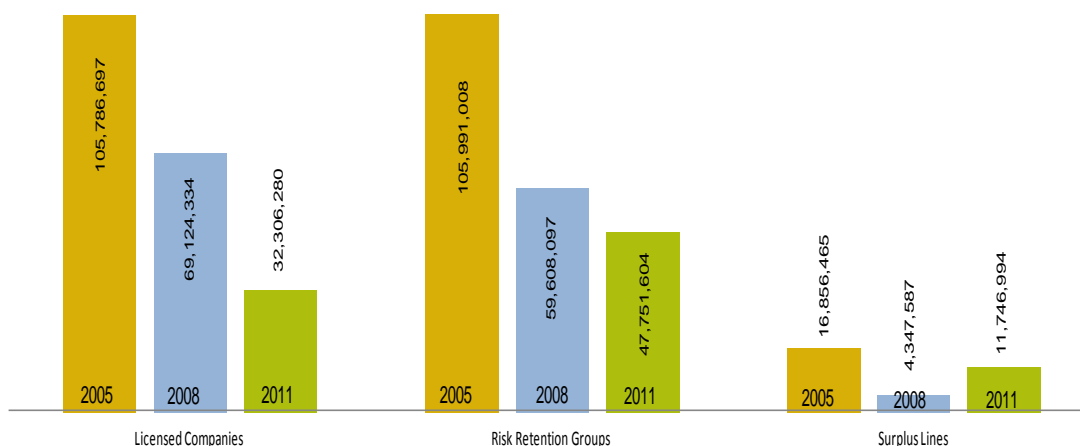
Figure 7

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 years²² 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.

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

MA Total Market Losses 2005, 2008, 2011*



*Based on unaudited NAIC data - direct loss incurred

Figure 8

Massachusetts licensed insurance companies reported total claims losses of \$105.8 million in 2005, less than the \$178.1 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 \$32.3 million 2011 –53.3% less than the \$69.1 million in losses incurred in 2008 and 69.5% less than the \$105.8 million in losses incurred in 2005.

RRGs incurred \$47.8 million in losses in 2011 – 19.9% less than the \$59.6 million incurred in losses in 2008 and 54.9% less than the \$106.0 million incurred in losses in 2005. Surplus lines carriers incurred \$11.7 million in claims losses in 2011 – 170.2% more than the \$4.3 million incurred in losses in 2008 and 30.3% less than the \$16.9 million incurred in losses in 2005. (Figure 8)

Loss Ratios

Loss ratios from company financial statements (incurred losses divided by earned premium) reflect the proportion of the premium dollar that is 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) declined from 76.5% in 2005 to 28.9% in

Medical Malpractice Insurance in the Massachusetts Market

2011. The loss ratios on a national basis for all medical malpractice companies declined from 51.9% in 2005 to 34.7% in 2011. (Figure 9)

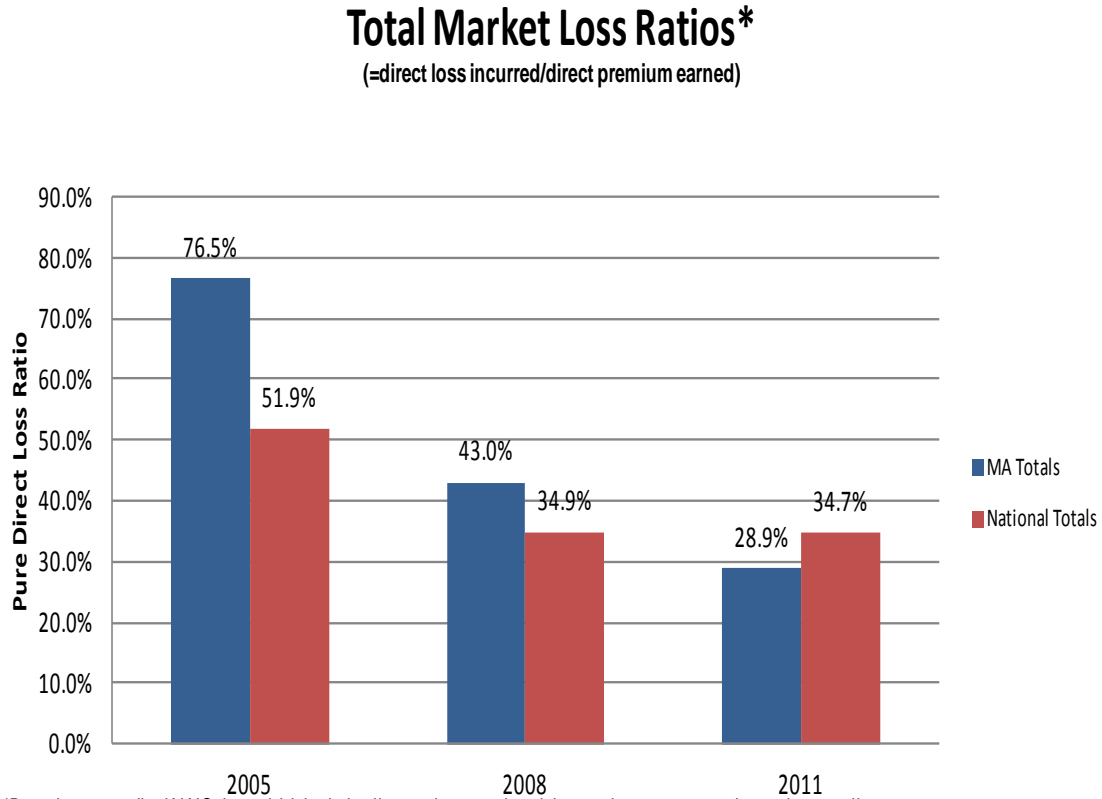


Figure 9

The licensed insurance companies' loss ratios declined from 59.4% in 2005 to 18.7% in 2011. The RRGs' loss ratios decreased during this period from 125.0% in 2005 to 37.8% in 2011. The surplus lines carriers' loss ratios increased from 47.0% in 2005 to 60.6% in 2011. (Figure 10)²³

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

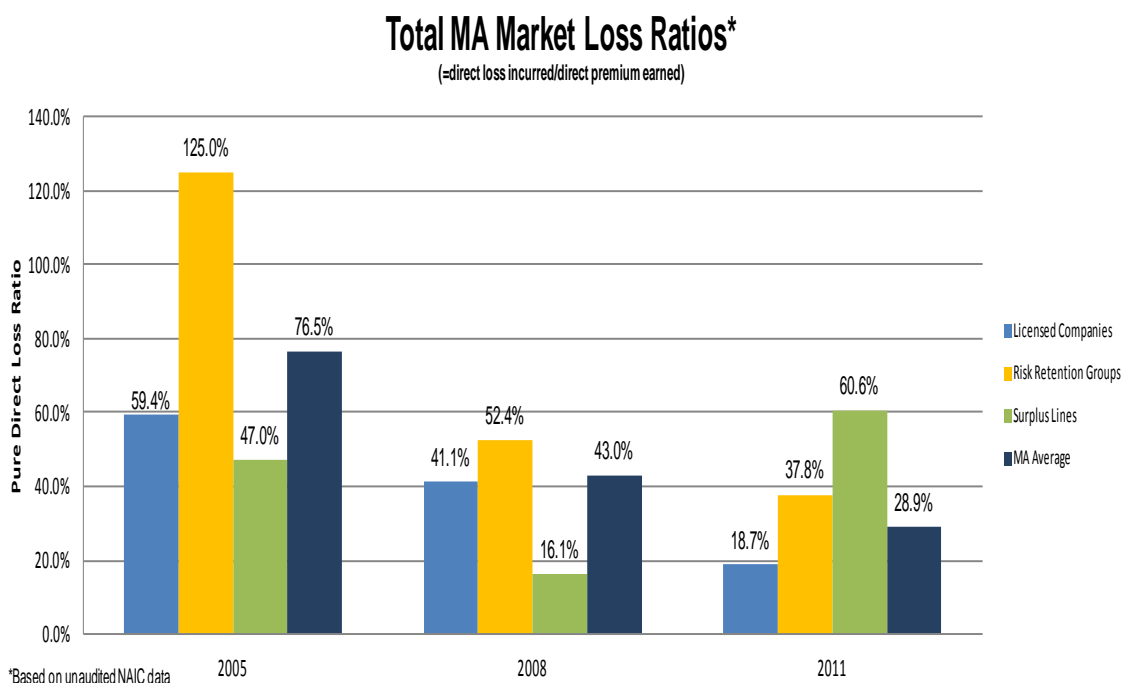


Figure 10

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 a company and factors in the costs required to run an insurance company, 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 ²⁴; 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

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

Medical Malpractice Insurance in the Massachusetts Market

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.

Figure 11

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
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%
2006	\$174,609	99.3%	7.0%	11.2%	1.2%	15.0%	-3.7%
(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)							

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 40% of the total market, and 74% of the admitted market. As such, its rate

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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)

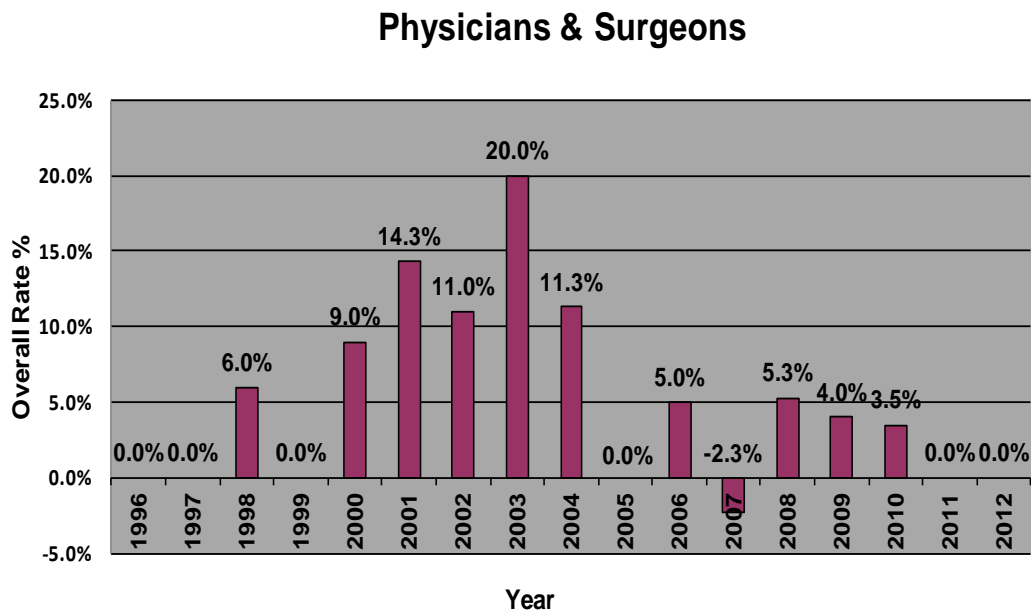


Figure 12

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.

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. 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 2011
	2002-2011	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 13²⁵

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

Table 24: Mean and Median Physician Malpractice Payments, 2002 - 2011

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

²⁵ Figure 13 and Figure 14 are from the National Practitioner Data Bank 2011 Annual 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.²⁶ These rates since have been updated to reflect Massachusetts' rates as of October 1, 2012. The rates that the company charges 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 10/1/2012 FOR CLAIMS MADE POLICIES*							
25 HIGHEST MASSACHUSETTS COMPARED TO RATES IN OTHER NORTHEAST STATES							
Class	Description	Massachusetts Effective 7/1/2012	Connecticut Effective 12/1/2011	Rhode Island Effective 9/1/2012	N. Hampshire Effective 10/1/2012	New Jersey Effective 12/1/2011	PA-Territory 4 Effective 9/1/2012
80152	Neurology - incl children, major surgery	111,274	109,897	87,905	106,737	92,156	95,805
80153	OB, gynecology, major surgery	104,071	121,696	97,639	72,477	108,082	101,122
80168	OB, major surgery	104,071	121,696	97,639	72,477	108,082	101,122
80154	Orthopedic incl. spinal, major surgery	89,418	90,207	64,056	61,934	69,131	71,867
80146	Vascular, major surgery	59,257	62,597	54,311	54,027	56,561	58,800
80150	Cardiovascular disease, major surgery	59,257	62,597	66,601	54,027	53,091	55,194
80170	Head & neck, major surgery	59,257	62,597	40,264	47,439	53,091	55,194
80171	Traumatic, major surgery	59,257	62,597	N/A	54,027	53,091	55,194
80354	Orthopedic excl. spinal, major surgery	48,353	75,301	51,266	47,439	56,561	58,800
80141	Cardiac, major surgery	48,305	46,772	N/A	54,027	53,091	55,194
80143	General (NOC), major surgery	48,305	75,301	38,932	44,803	53,091	55,194
80144	Thoracic, major surgery	48,305	62,597	40,264	54,027	56,561	58,800
80155	Plastic - otorhinolaryngology, major surg.	48,305	62,597	54,311	44,803	53,091	55,194
80156	Plastic (NOC), major surgery	48,305	62,597	54,311	44,803	53,091	55,194
80157	Emergency med, incl major surg (brd cert)	48,305	46,772	N/A	47,439	37,821	39,317
80166	Abdominal, major surgery	48,305	46,772	N/A	44,803	53,091	55,194
80167	Gynecology, major surgery	48,305	46,772	38,932	47,439	53,091	55,194
80169	Hand, major surgery	48,305	46,772	36,885	44,803	53,091	55,194
80184	Bariatric, major surgery	48,305	75,301	38,932	44,803	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	26,640	19,154	28,860	30,904
80464	Emergency med, no major surg (no brd cert)	33,170	31,067	N/A	19,154	28,860	30,904
80101	Bronco-Esophagology, major surgery	32,143	33,706	N/A	31,626	23,542	24,475
80103	Endocrinology, major surgery	32,143	33,706	N/A	31,626	17,722	18,423
80104	Gastroenterology, major surgery	32,143	33,706	N/A	22,402	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 similar to five other states, but over \$31,500 more than what is charged in New Hampshire. For the related "gynecology only" rating class (80167), Massachusetts' average rates are \$48,305; this is relatively similar to rates in the other states.

²⁶ 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.

Conclusion

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

The Division's 2007 report analyzed different reasons that medical malpractice costs may be high and proposed ideas to reform the tort or medical systems. Specifically, the 2007 report looked at 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;
- 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 these specialties' premiums by looking at the following changes:

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

Although the Division did not conduct the same analysis for this report or the 2008, 2009 and 2010 reports, it does believe that the 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 2011.²⁷

Company Name	Domicile
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
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

²⁷ 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 2011:²⁸

Admiral Insurance Company	DE
Arch Specialty Insurance Company	NE
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
Gemini Insurance Company	DE
General Star Insurance Company	CT
Hallmark Specialty Insurance Company	OK
Homeland Insurance Company of New York	NY
Houston Casualty Company	TX
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
Princeton Excess & Surplus Lines Insurance Company	DE
ProAssurance Casualty Company	MI
Professional Underwriters Liability Insurance Company	UT
Rockhill Insurance Company	AZ
Steadfast Insurance Company	DE
Torus Specialty Insurance Company	DE
Western World Insurance Company, Inc.	NH

²⁸ 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 2011:²⁹

Company Name	Domicile
Affiliates Insurance Reciprocal (RRG)	VT
Allied Professionals Insurance Co. (RRG)	AZ
American Association of Orthodontists Insurance Co. (RRG)	VT
American Excess Insurance Exchange (RRG)	VT
Applied Medico Legal Solutions, Inc. (RRG)	AZ
Caring Communities Reciprocal (RRG)	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

²⁹ According to direct written premium reported to the National Association of Insurance Commissioners.

