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# Medical Malpractice Insurance in Minnesota

2020

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Pursuant to Minnesota Session Laws 2006, chapter 255, section 76, the Minnesota Department of Commerce (Commerce) provides this report on the status of medical malpractice insurance in Minnesota. The 2020 Medical Malpractice Insurance in Minnesota report is based on data evaluated as of December 31, 2019 and is limited to Minnesota's standard marketplace for medical malpractice insurance.

## Summary

- Medical malpractice insurance in Minnesota represents less than one percent of total property and casualty premiums in Minnesota. In 2019, there were \$83 million in annual medical malpractice premiums compared to the total Minnesota property and casualty insurance marketplace of \$12.5 billion.
- The largest medical malpractice insurer in Minnesota is a policyholder-owned company, MMIC Insurance (MMIC). Headquartered in Minneapolis, MMIC writes 42 percent of the medical malpractice premium in Minnesota.
- Minnesota's malpractice rates continue to be among the lowest in the nation.

## History

During the past 40 years, medical malpractice insurance has changed significantly in Minnesota. In the early 1970s, several insurance companies exited the market both nationally and in Minnesota due to loss ratio deterioration and unstable future cost forecasts. As a partial solution to these issues, claims-made coverage was introduced. This helped improve the accuracy of the pricing process and ensured that most of the remaining major insurance companies continued to write medical malpractice coverage for several more years.

During the 1990s, insurance rates did not change significantly, although the results for insurers became increasingly unprofitable in part due to trends in litigation that were not favorable to insurers. In 2001, The St. Paul Companies, the nation's leading medical malpractice insurer, exited the market.

Since the late 1990s and early 2000s, there has been a gradual recovery in the medical malpractice marketplace with reasonably stable rates through 2018. Furthermore, there were 63 medical malpractice filings in 2012, 58 in 2013, 56 in 2014, 63 in 2015, 69 in 2016, 62 in 2017, 56 in 2018 and 76 in 2019. This measure indicates that the market is relatively stable, with the exit of few existing carriers and the entry of few new carriers for this complex line of business.

## Competition in the Minnesota Marketplace

For calendar year 2019, \$83 million in medical malpractice premiums were written in Minnesota by 86 different insurance companies. Of the 86 companies, only 14 wrote more than \$1 million in premiums, while eight (8) companies wrote more than \$2 million in premiums. Other than MMIC, no other companies wrote more than \$6 million in premium. The top ten insurers wrote 74 percent of the premium in Minnesota during 2019.

MMIC is, by far, the largest insurer in this market, with 42 percent of the total premiums. MMIC is policyholder-owned and returns excess profits as dividends to its policyholders.

Table 1 identifies the premiums and market shares for the top 10 companies as well as the remaining companies combined for the Minnesota medical malpractice insurance marketplace. MMIC stands out, with around seven times the premiums of the second largest carrier.

*Table 1 - Minnesota Malpractice Insurance – Premiums and Market Share for 2019*

<b>NAIC Company Code</b>	<b>Company Name</b>	<b>Minnesota 2019 Premiums \$(000)</b>	<b>Minnesota Market Share</b>
<b>16942</b>	MMIC INS INC	34,951	42%
<b>31127</b>	COLUMBIA CAS CO	5,211	6%
<b>10638</b>	PROSELECT INS CO	4,003	5%
<b>10903</b>	AMERICAN EXCESS INS EXCH RRG	3,935	5%
<b>20079</b>	NATIONAL FIRE & MARINE INS CO	2,777	3%
<b>22667</b>	ACE AMER INS CO	2,561	3%
<b>20427</b>	AMERICAN CAS CO OF READING PA	2,236	3%
<b>15865</b>	NCMIC INS CO	2,143	3%
<b>38954</b>	PROASSURANCE CAS CO	1,946	2%
<b>21199</b>	ARCH SPECIALTY INS CO	1,838	2%
	All Other Insurance Companies	21,602	26%
	Grand Total:	83,203	100%

The Minnesota market structure is not atypical. For example, the Wisconsin malpractice market is similar to Minnesota. Although the Wisconsin market is somewhat more diversified, most of the premiums are written by a few dominant companies. Table 2 provides a snapshot of Wisconsin's malpractice insurance market.

Table 2 - Wisconsin Malpractice Insurance – Premiums and Market Share for 2019

NAIC Company Code	Company Name	Wisconsin 2019 Premiums \$(000)	Wisconsin Market Share
38954	PROASSURANCE CAS CO	19,403	26%
16942	MMIC INS INC	12,583	17%
20443	CONTINENTAL CAS CO	10,419	14%
11843	MEDICAL PROTECTIVE CO	6,486	9%
10638	PROSELECT INS CO	4,085	5%
33405	WISCONSIN HLTH CARE LIAB INS PLAN	2,070	3%
20427	AMERICAN CAS CO OF READING PA	2,050	3%
15865	NCMIC INS CO	1,993	3%
31127	COLUMBIA CAS CO	1,365	2%
35378	EVANSTON INS CO	901	1%
	All Other Insurance Companies	13,830	18%
	Grand Total:	75,185	100%

## Minnesota Rates

Nationally, most states reported stable rates for medical professional liability insurance for physicians over the past three years. The Medical Liability Monitor (the Monitor) conducts an annual survey of the major writers of medical professional liability insurance for physicians (representing 65 to 75 percent of the national market). The survey collects information on rates for the following three specialties: internal medicine, general surgery and obstetrics/gynecology.

According to the Monitor’s 2019 survey, overall rates increased (0.8 percent) from 2018 to 2019. Prior surveys showed a slight increase of 0.5 percent in the prior year, and a decrease of 1.1 percent the year before. The Monitor’s survey also observed that 68 percent of the rates did not change from 2018 to 2019. For those that did change, there were more rate increases (28 percent) than decreases (5 percent) in 2019.

In recent history, the Upper Midwest has had the lowest rates for medical professional liability insurance in the country. The states of Minnesota, North Dakota and South Dakota have been included in the Monitor’s list of the five states with the lowest rates for each of the three categories tracked. Table 3 illustrates the differences in rates among several states, according to the Monitor<sup>1</sup>.

<sup>1</sup> The states listed were selected as they have one relatively large urban area.

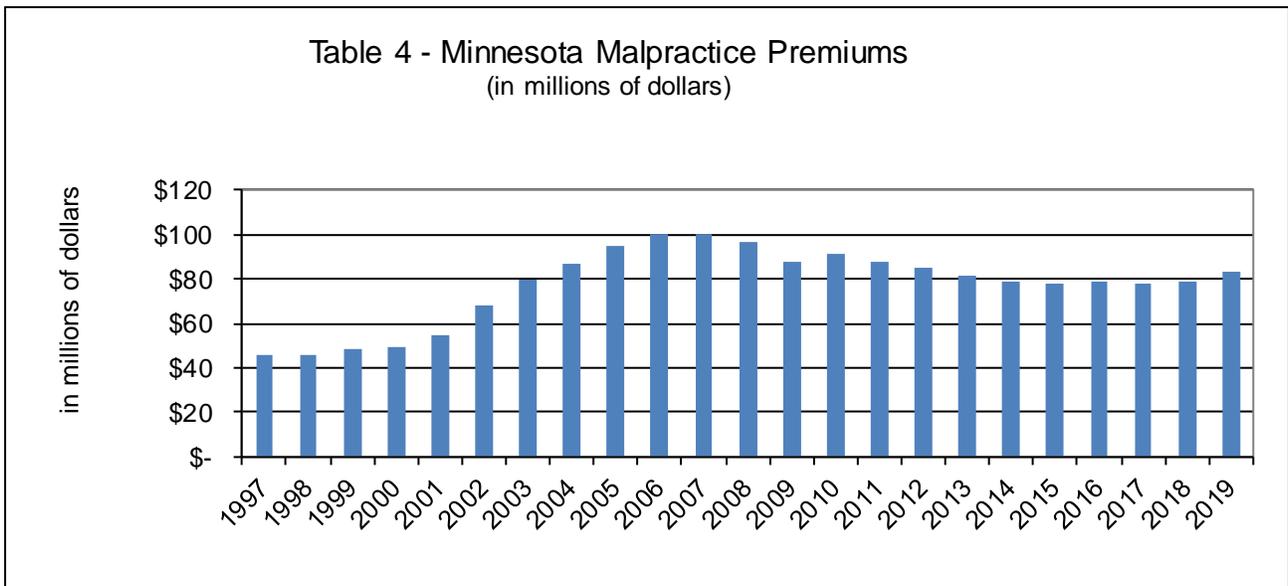
Table 3 – Annual Rates for Various Specialties in Selected States

	<b>Internal Medicine</b>	<b>General Surgery</b>	<b>Ob/GYN</b>
<b>Minnesota</b>	\$4,906	\$14,717	\$22,484
<b>Wisconsin</b>	\$6,923	\$22,813	\$34,667
<b>Arizona</b>	\$13,080	\$39,433	\$50,263
<b>Washington</b>	\$12,096	\$60,164	\$58,919
<b>Colorado</b>	\$12,565	\$60,561	\$54,520
<b>Georgia</b>	\$14,029	\$42,875	\$64,205

Minnesota’s relatively low rates for liability insurance for physicians is attributable to several factors:

- The Upper Midwest has relatively high health quality. In this report last year, it was noted that according to the Federal Agency for Healthcare Research and Quality, Minnesota ranked 8th best in the nation in overall health care. An update for the rankings from the Federal Agency for Healthcare Research and Quality was not available this year, but according to United Health Foundation’s America’s Health Rankings 2018 Annual Report Minnesota ranked 7<sup>th</sup> in overall health.
- The legal climate in Minnesota is slightly favorable when compared to other states. Medical malpractice coverage protects policyholders from lawsuits. The U.S. Chamber of Commerce periodically publishes results of a survey on the tort liability system as perceived by U.S. business. In the most recent publication (2019), Minnesota was ranked 20<sup>th</sup> best in overall rankings of legal climates by state. The remaining Upper Midwest states were ranked as follows (with one being best): 23<sup>rd</sup> for Iowa, 6<sup>th</sup> for North Dakota, 10<sup>th</sup> for South Dakota and 13<sup>th</sup> for Wisconsin.

As shown in Table 4, premiums decreased in Minnesota from 2007 to 2015, but have stabilized over the last few years. Prior to that period, substantial increases were observed.



## Uncertainty of Future Costs

Minnesota’s medical malpractice market has been profitable for insurance companies during three of the past five years. The Combined Ratio (see Table 5 below) reveals that for 2014, 2015 and 2017 premiums were more than sufficient to cover losses and all expenses while for 2016 and 2018 they were not sufficient. Additional funds are also made from investment income.

*Table 5 – Medical Malpractice Insurance in MN*

Calendar Year	Number of Insurers	Direct Written Premium	Premium Growth	Loss Ratio Excluding Loss Adjustment Expense (LAE)	Best's LAE (Loss Adjustment Expense)	Best's Underwriting Expense	Combined Ratio	Investment Gain and Other Income	Operating Ratio
2014	79	\$79,035	-3%	42%	28%	24%	94%	27%	67%
2015	82	78,300	-1%	19%	28%	29%	76%	13%	63%
2016	88	78,623	0%	84%	31%	25%	140%	14%	126%
2017	91	78,084	-1%	20%	26%	25%	71%	14%	57%
2018	84	78,962	1%	65%	28%	26%	119%	17%	102%

Data source: NAIC Annual Statements filed annually by Insurance Companies & *Best's Aggregates & Averages* (2019 data not yet available.)

Generally, this level of profitability indicates a healthy marketplace as the average operating ratio is 83 percent. However, it is noted that two of the last three years had operating ratios over 100 percent. Also, in a recent webinar given by Pinnacle Actuarial Resources, information was provided that showed some early warning signs that the profitability cycle for this market may be reaching a turning point.

The most significant challenge with this line of insurance is that it is very difficult to predict how the litigation environment may evolve over the long term. Medical malpractice is very sensitive to litigation impacts. In medical malpractice insurance, the administrative costs associated with adjusting and settling claims averaged 28 percent of premiums during 2018, which is relatively high compared to other property and casualty lines of insurance. For private passenger auto liability, the property-casualty insurance line with the most premium volume, claims administrative expenses averaged 13 percent in 2018.

In order to accurately estimate future costs of coverage for any line of business, the following considerations need to be taken into account:

**1. An insurer needs to know whether or not it has made a profit.**

For a liability insurance line such as medical malpractice, this analysis can be quite complex. Specifically, claims reported during the policy period may take several years to ultimately settle. In addition, juries and trial courts can be inconsistent and unpredictable in determining negligence and the seriousness of an injury. If rates turn out to be inadequate, it can pose serious consequences to the viability of these specialty writers.

**2. An insurer must accurately predict how the future will differ from the present.**

Inflation trends and steady changes in the number of claims can be predicted relatively accurately, if changes are at the same rate as in the past. Any sudden, abrupt changes are often difficult to predict and changes in the legal climate (for example, an expansion of the theory of negligence) cannot be forecasted and could potentially threaten the financial solvency of an insurer.

**3. An insurer's outcome will be affected by investment income.**

For medical malpractice liability and other longer-tailed lines of insurance, a significant delay between the time premiums are collected and claims are paid allows insurers to invest these funds. These investment gains help reduce what would otherwise be charged for insurance. According to Best's Aggregates and Averages, annual investment returns for medical malpractice has varied from a low of 12 percent to a high of 27 percent over the past 10 years.

Financial implications related to changes in legal liability are driven by the liability system in a particular jurisdiction. In simplistic terms, one would expect a liability system that is more favorable to the plaintiff to have more expensive liability insurance costs than one that is less favorable to the plaintiff.

## Expansion of Non-Standard Options

Although this Report only focuses on the traditional standard marketplace, other options for financing medical malpractice coverage in Minnesota include:

- The Minnesota Medical Malpractice Joint Underwriting Association (MJUA). The Minnesota Medical Malpractice JUA was created by the 1976 Minnesota State Legislature under Minnesota Statutes Chapter 62F to provide medical malpractice insurance to any licensed health care provider unable to obtain this insurance through ordinary methods and who practices or provides professional services within Minnesota.

Effective January 1, 2008, the Minnesota Medical Malpractice JUA was merged into the Minnesota Joint Underwriting Association (MJUA) which provides coverage to persons or entities unable to obtain insurance through ordinary methods if the insurance is required by statute, ordinance or otherwise required by law, or is necessary to earn a livelihood or conduct a business and serves a public purpose (Minnesota Statutes Chapter 62I). The Minnesota Legislature specifically authorized the MJUA to provide insurance coverage to day care providers; foster parents; foster homes; developmental achievement centers; group homes; sheltered workshops for mentally, emotionally or physically handicapped persons; and citizen participation groups. The MJUA wrote \$0.3 million in medical malpractice coverage for nursing homes from July 1, 2019 through June 30, 2020.

- Large groups are often self-insured, part of a Risk Retention Group or have their own captive insurer. Data on their loss experience, costs and expenses is not available to Commerce<sup>2</sup>. As health care systems continue to consolidate, this self-insured option becomes more commonplace.
- Malpractice coverage is available through the surplus lines marketplace that provides specialized coverage for unique or high risks that licensed insurers do not cover.

## Possible COVID-19 Impact

At a recent webinar presented by Pinnacle Actuarial Resources, Inc. the impact of COVID-19 for Medical Professional Liability premiums was discussed. While the net impact of COVID-19 is not yet clear, several factors may contribute to future rate increases:

- Conditions could be more severe after delayed treatment.
- Possible claims around the determination of non-essential surgeries.

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<sup>2</sup> Facilities do have to report “adverse health events” to the Commissioner of the Minnesota Department of Health.

- Bad outcomes could create exposure particularly for hospitals and long-term care facilities.
- Fatigue for healthcare workers.

The following reasons were offered why there could be possible reductions in rates:

- Less patients seeking treatment.
- Healthcare workers' heroism reflected in jury attitudes.
- Immunity statutes/orders may reduce or eliminate liability for providers.

## **Conclusion**

Minnesota's medical malpractice marketplace has recovered from the turbulent environment of the late 1990s and early 2000s as rates have stabilized and the product has become more widely available. The rates in Minnesota are close to the lowest in the country. Nonetheless, this insurance line is inherently volatile and can be dramatically affected by changes in the litigation environment, health care costs, and investment income.