

**Minnesota Department of Commerce**  
**Medical Malpractice Insurance in Minnesota**  
Data as of 12/31/2012



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**Report on Medical Malpractice Insurance in Minnesota**

Pursuant to Minnesota Session Laws of 2006, chapter 255, sec. 76, the Minnesota Department of Commerce (Commerce) makes this required report on the status of medical malpractice (med mal) insurance in Minnesota. Generally, Minnesota's medical malpractice market has not significantly changed since the last review (January 29, 2010).<sup>1</sup>

**Summary**

Commerce makes several observations relative to Minnesota's med mal marketplace, including:

- Med mal insurance in Minnesota is a relatively small line of insurance representing less than one percent of the overall property and casualty premiums in Minnesota. For 2012, there were \$85 million in annual premiums of medical malpractice compared to the total Minnesota insurance marketplace of \$9.4 billion;
- The largest med mal insurer in Minnesota is a doctor-owned company, Midwest Medical Insurance Company (MMIC). MMIC writes over 60% of the medical malpractice premium in Minnesota;
- As noted in prior reports, Minnesota's malpractice rates are among the lowest in the nation; and
- Continued certainty in the marketplace exists regarding future costs.

**Discussion**

Over the past 40 years, Med mal insurance has experienced significant changes in Minnesota. During the early 1970s, several insurance companies exited the market 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 med mal 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. Following this time period, in 2001, The St. Paul Companies, the nation's leading med mal insurer with \$583 million in premium, exited the market.

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<sup>1</sup> The scope of this Report is limited to Minnesota's standard marketplace for medical malpractice insurance. It is not uncommon for those who need coverage to use non-standard insurance options for providing medical malpractice coverage in Minnesota.

Since The St. Paul Company’s exit in 2001, very few insurance carriers have been writing med mal coverage. Some of the specialties that The St. Paul Companies covered were, and continue to be, unwanted by the remaining med mal writers, due to a lack of staff and capital. As a result, The St. Paul Company’s exit created a crisis for many smaller coverage classes, including ambulance services and nursing homes, which had difficulty obtaining coverage elsewhere.

Although not completely corrected, since the late 1990s and early 2000s, a gradual recovery in the marketplace has been observed with reasonably stable rates. Marketplace concerns and uncertainty remain and could trigger another significant disruption in the future.

**Competition in the Minnesota Marketplace**

For Calendar Year 2012, there was \$85 million of premium written by 76 different insurance companies. Of this total, only 13 of these companies wrote more that \$1 million and eight wrote more than \$2 million in premium. 84% of the market was written by the top ten insurers.

MMIC is, by far, the largest insurer in this market, with 62% of the premiums. MMIC is doctor-owned and returns unneeded profits as dividends to its physician policyholders.

Table I below identifies the premiums and market shares for the top ten companies as well as the remainder of the companies combined for the Minnesota med mal insurance marketplace. MMIC stands out having more than ten times the premium of the second largest carrier.

**Table I - Minnesota Malpractice Insurance – Premiums and Market Share for 2012**

NAIC Company Code	Company Name	MN 2012 Premiums \$(000)	MN Market Share
16942	Midwest Medical Ins Co	\$52,633	62%
20443	Continental Cas Co	3,022	4%
10903	American Excess Ins Exchange RRG	2,387	3%
15865	NCMIC Ins Co	2,093	2%
21199	Arch Specialty Ins Co	2,084	2%
20427	American Cas Co Of Reading PA	2,075	2%
22667	Ace American Ins Co	2,053	2%
31127	Columbia Cas Co	2,040	2%
19437	Lexington Ins Co	1,614	2%
38954	Proassurance Casualty Co	1,437	2%
	All Other Companies (56)	<u>13,496</u>	<u>16%</u>
		\$84,934	100%

The Minnesota market structure is not atypical. For example, the Wisconsin malpractice market is fairly similar to Minnesota (see Table II on the next page). Although the Wisconsin market is somewhat more diversified, most of the premium is written by a few dominant companies.

**Table II - Wisconsin Malpractice Insurance – Premiums and Market Share for 2012.**

NAIC Company Code	Company Name	WI 2012 Premiums \$(000)	WI Market Share
38954	Proassurance Casualty Co	\$22,661	26%
20443	Continental Cas Co	13,429	15%
16942	Midwest Medical Ins Co	11,689	13%
11843	Medical Protective Co	9,883	11%
33111	MHA Ins Co	3,651	4%
36234	Preferred Professional Ins Co	2,475	3%
20427	American Cas Co Of Reading PA	2,080	2%
15865	NCMIC Ins Co	2,001	2%
31127	Columbia Cas Co	1,720	2%
33405	Wisconsin Health Care Liability Insurance Plan	1,715	2%
	All Other Companies (68)	<u>15,477</u>	<u>18%</u>
		\$86,781	100%

Another measure of the marketplace is to compare the number of medical malpractice rate/form filings in the last few years for med mal coverage. There were 48 med mal filings in 2010, 61 in 2011 and 63 in 2012. Again, based upon this measure and outside of the current carriers, there does not appear to be significant market interest in this potentially volatile and complex line of business.

**Minnesota Rates**

As this Report identifies, the med mal marketplace has stabilized nationally during the last few years. Nationally, most states report flat rates or small decreases over the past three years. The *Medical Liability Monitor* (the Monitor) conducts an annual survey of the major writers of liability insurance for physicians (which represents 65% to 75% of the national market). The survey asks for rates for the following three specialties: internal medicine, general surgery and obstetrics/gynecology. According to the Monitor’s 2012 survey, rates have continued to fall, however, the magnitude of these decreases are small (a 1.7% decrease over the last year, a 0.2% decrease the prior year and a 0.5% decrease the year before that). The Monitor’s survey also observed that 59% of the rates did not change from the last study and, although small in magnitude, decreases continued to outpace increases (as they have since 2006).

In recent history, the upper Midwest has had the lowest rates in the country. In particular, Minnesota, Wisconsin and South Dakota have been included in the list of the Monitor’s lowest five rates for each of the three categories tracked. Table III on the next page illustrates the differences in rates among the states according to the Monitor.<sup>2</sup>

<sup>2</sup> The states listed were selected as they have one relatively large urban area and they do not have rates by territory.

**Table III - Rates for Various Specialties in Selected States**

	<b>Internal Medicine</b>	<b>General Surgery</b>	<b>Ob/GYN</b>
Minnesota	\$4,906	\$14,717	\$22,484
Wisconsin	6,923	22,813	34,667
Arizona	13,409	40,745	51,978
Washington	11,936	59,368	64,600
Colorado	12,455	59,696	56,738
Georgia	12,911	43,904	64,884

What makes the experience identified in the Monitor’s survey for Minnesota and the other upper Midwest states better than nationally? In previous editions of this Report the following explanations were provided.

1. The upper Midwest has relatively high health quality.

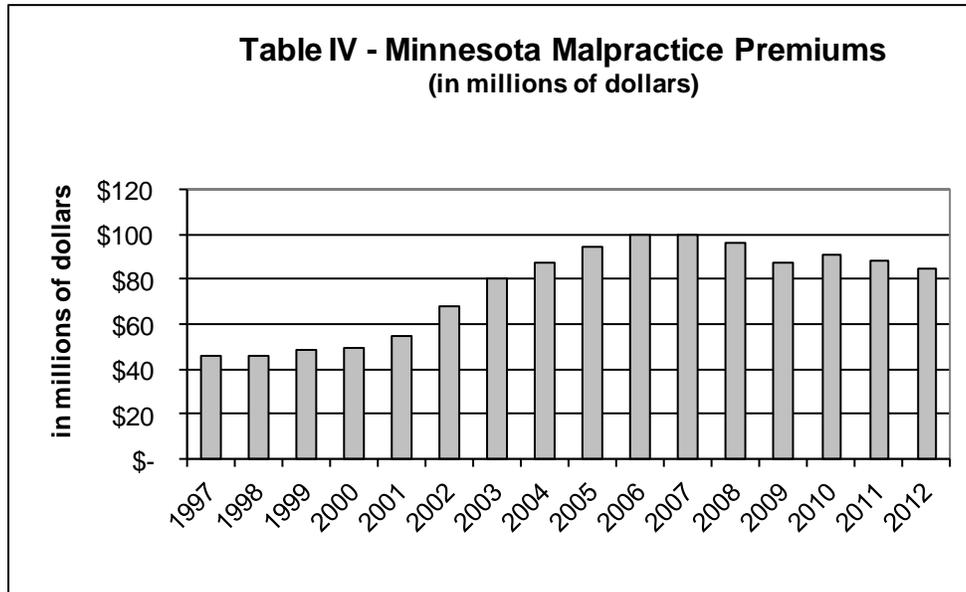
According to the federal Agency for Healthcare Research and Quality, Minnesota ranked best in the nation in overall health care. Two border states, Wisconsin and Iowa, were also in the top five, while the other border states in the upper Midwest, North Dakota and South Dakota, were ranked within the top eleven states.

2. The legal climate is relatively favorable when compared to other states.

Med mal 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 done during 2012, Minnesota was ranked fourth best in overall rankings of legal climates by state. The remaining upper Midwest states were ranked as follows (with one being best): eight for North Dakota, ten for Iowa, eleven for South Dakota and fifteen for Wisconsin.

3. MMIC, the major insurer in Minnesota, stresses patient safety and practices that minimize malpractice claim costs.

As shown on Table IV, premiums have been stable in Minnesota since 2005. Prior to that period, substantial increases were observed. This is consistent with the national picture.



**Uncertainty of Future Costs**

Minnesota med mal has been profitable for insurance companies during the past five years.<sup>3</sup> The Combined Ratio (see Table V below) reveals that in four of the past five years premiums were more than sufficient to cover losses and all expenses. Additional funds were also made from investment income. According to MMIC’s 2011 Annual Report, in 2011, the company returned \$7.5 million in dividends to its policyholders.

**Table V - Medical Malpractice Insurance Premiums and Losses in Minnesota**

			(1)	(2)	(3)	(4)	(5)	(6)	
number of insurers	Direct Premium Written	Premium Growth	Loss Ratio Excluding all LAE	Best's Loss Adj Exp Inc	Best's UW Exp Inc	Combined Ratio (1)+(2)+(3)	Inv Gain & Other Income	Operating Ratio (4)-(5)	
2007	52	\$99,980	0%	40%	26%	19%	85%	16%	69%
2008	56	96,490	-3%	49%	24%	19%	92%	7%	84%
2009	57	87,510	-9%	15%	26%	21%	62%	12%	50%
2010	66	91,354	4%	73%	25%	22%	120%	16%	104%
2011	70	87,855	-4%	42%	26%	23%	91%	18%	73%

Data source: NAIC Annual Statements filed annually by Insurance Companies & Best’s Aggregates & Averages

In most instances, this level of profitability indicates a healthy marketplace. However, there is enough uncertainty in med mal to ensure cautious actions from the insurance community. The most significant difficulty with this line of insurance is that it is virtually impossible to predict how the litigation environment may evolve over the long term. In order to accurately estimate future costs of coverage for any line of business, the following considerations need to be taken into account.

<sup>3</sup> 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.

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

For a liability line like med mal, this analysis can be quite complex. Specifically, claims reported during the policy period may take several years to ultimately settle. Additionally, juries and trial courts can be inconsistent and unpredictable in determining negligence and the seriousness of an injury. The effects of inadequate rates possess 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.

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.

Med mal is very sensitive to the litigation impacts. In med mal insurance the administrative costs associated with adjusting and settling claims averaged 26% of premium during 2011. For private passenger auto liability, the property-casualty insurance line with the most premium, claims administrative expenses averaged 13% in 2011. This level of litigation will ensure that medical malpractice insurance will continue to be written by only a small segment of the industry which is willing to invest the time and resources to specialize in this difficult line.

### **Expansion of Non-Standard Options**

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

- The Minnesota Medical Malpractice Joint Underwriting Association (MJUA). The MJUA was created by the 1986 Minnesota State Legislature to provide 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 Statue 62I). The 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 \$0.9 million in med mal coverage for nursing homes from July 1, 2011 through June 30, 2012.

- Large groups who are 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>4</sup>
- Malpractice coverage is available through the surplus lines marketplace.

### **Conclusion**

Minnesota's med mal marketplace has recovered from the turbulent environment of the late 1990s and early 2000s as rates have stabilized and the product is more widely available than during that time period. Although occasionally complaints are made about the prices, the rates in Minnesota are close to the lowest in the country. Nonetheless, this insurance line is inherently volatile as it can be dramatically affected by changes in the litigation environment, health care costs.

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<sup>4</sup> Facilities do have to report "adverse health events" to the Commissioner of the Minnesota Department of Health.