



Medical Malpractice Insurance in Minnesota

2018

Pursuant to Minnesota Session Laws of 2006, chapter 255, section 76, the Minnesota Department of Commerce (Commerce) provides this required report on the status of medical malpractice insurance in Minnesota in 2017 (“Report”). This report is based on data evaluated as of December 31, 2017 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. For 2017, there were \$78 million in annual medical malpractice premiums compared to the total Minnesota property and casualty insurance marketplace of \$11.6 billion.
- The largest medical malpractice insurer in Minnesota is a policyholder-owned company, MMIC Insurance (MMIC). Headquartered in Minneapolis, MMIC writes 49% 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. During 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, a gradual recovery in the medical malpractice marketplace has been observed with reasonably stable rates through 2017. Further, there were 63 medical malpractice filings in 2012, 58 in 2013, 56 in 2014, 63 in 2015, 69 in 2016 and 62 in 2017. 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 2017, \$78 million in medical malpractice premiums were written in Minnesota by 91 different insurance companies. Only 15 of these companies wrote more than

\$1 million, while seven companies wrote more than \$2 million in premiums. Other than MMIC, no other companies wrote more than \$4 million in premium. The top ten insurers wrote 75% of the premium in Minnesota during 2017.

MMIC is, by far, the largest insurer in this market, with 49% of the total premiums. MMIC is

policyholder-owned and returns excess profits as dividends to its policyholders.

Table 1 (below) 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, having more than 10 times the premiums of the second largest carrier.

Table 1 - Minnesota Malpractice Insurance – Premiums and Market Share for 2017

NAIC Company Code	Company Name	Minnesota 2017 Premiums \$(000)	Minnesota Market Share
16942	MMIC Ins Co	38,037	49%
10638	Proselect Ins Co	3,418	4%
10903	American Excess Ins Exch RRG	2,819	4%
31127	Columbia Cas Co	2,238	3%
15865	NCMIC Ins Co	2,190	3%
20427	American Cas Co of Reading PA	2,121	3%
20443	Continental Cas Co	2,011	3%
38954	Pro Assurance Cas Co	1,948	2%
22667	Ace Amer Ins Co	1,856	2%
20079	National Fire & Marine Ins Co	1,791	2%
	All Other Insurance Companies	19,655	25%
	Grand Total:	78,084	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 - Wisconsin Malpractice Insurance – Premiums and Market Share for 2017

NAIC Company Code	Company Name	Wisconsin 2017 Premiums \$(000)	Minnesota Market Share
38954	Proassurance Cas Co	24,631	29%
16942	MMIC Ins Inc	10,143	12%
20443	Continental Cas Co	9,814	12%
11843	Medical Protective Co	7,674	9%
10638	Proselect Ins Co	4,071	5%
20427	American Cas Co of Reading PA	2,065	2%

33405	Wisconsin Health Care Liab Ins Plan	2,047	3%
15865	NCMIC Ins Co	2,044	2%
41718	Endurance Amer Specialty Ins Co	1,825	2%
31127	Columbia Cas Co	1,517	2%
	All Other Insurance Companies	17,961	21%
	Grand Total:	83,795	100%

Minnesota Rates

Nationally, most states report flat rates during the past three years. The Medical Liability Monitor (the Monitor) conducts an annual survey of the major writers of liability insurance for physicians (representing 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 2017 survey, rates decreased slightly from 2016 to 2017. The magnitude of this decrease is relatively small (1.1%). Prior surveys showed a small decrease of 0.1% in the prior year, and a small increase of 0.2% the year before. The Monitor's survey also observed that 74% of the rates did not change from the last study. Also, there were close to the same amount of rate increases (13%) and decreases (12%) in 2017.

In recent history, the Upper Midwest has had the lowest rates for medical professional liability insurance in the country. In particular, 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 the states, according to the *Monitor*¹.

Table 3 - Rates for Various Specialties in Selected States

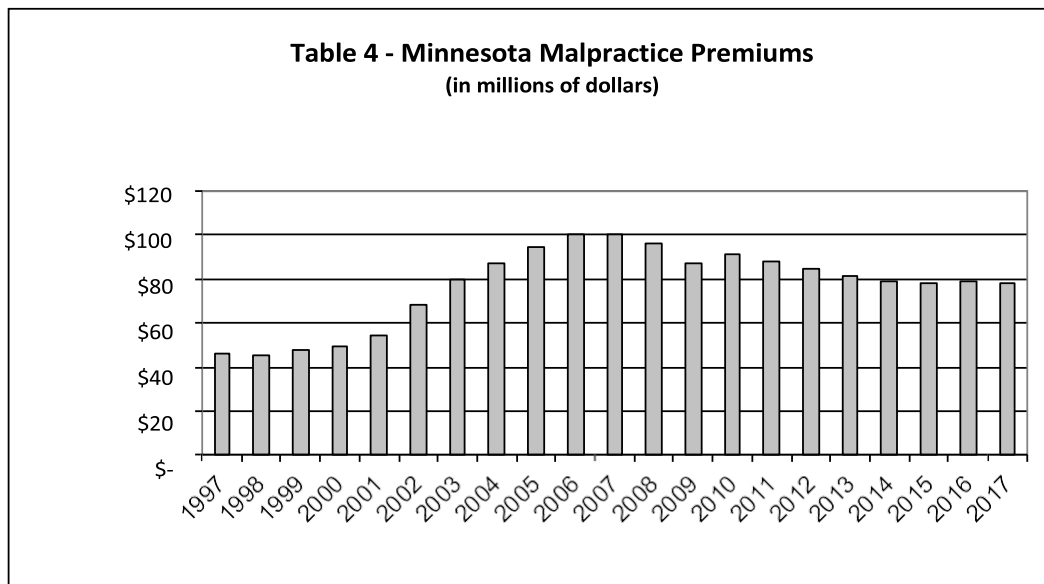
	Internal Medicine	General Surgery	Ob/GYN
Minnesota	\$4,906	\$14,717	\$22,484
Wisconsin	\$6,923	\$22,813	\$34,667
Arizona	\$13,080	\$39,433	\$50,263
Washington	\$12,096	\$60,164	\$58,919
Colorado	\$12,565	\$60,561	\$54,520
Georgia	\$13,489	\$41,226	\$61,736

¹ The states listed were selected as they have one relatively large urban area.

What makes the experience identified in the *Monitor's* survey for Minnesota and the other Upper Midwest states better than the national experience?

- The Upper Midwest has relatively high health quality. According to the federal Agency for Healthcare Research and Quality, Minnesota ranked 11th best in the nation in overall health care. Three border-states (Wisconsin, North Dakota and Iowa) were in the top six, while the other border state (South Dakota) was ranked 21st.
- The legal climate is relatively 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, done during 2017, 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): 1st for South Dakota, 13th for Iowa, 17th for North Dakota and 20th for Wisconsin.
- MMIC, the major insurer in Minnesota, stresses patient safety and practices that minimize malpractice claim costs.

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. The downward trend is consistent with the national picture, but the recent stabilization is not observed nationally.



Uncertainty of Future Costs

Minnesota's medical malpractice market has been profitable for insurance companies during each of the past five years, except 2016. The Combined Ratio (see Table V below) reveals that in all five years except for 2016, premiums were more than sufficient to cover losses and all expenses. Additional funds were also made from investment income. According to MMIC, the company returned \$2.0 million in dividends to its policyholders in 2017.

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Calendar Year	Number of Issuers	Direct Written Premium	Premium Growth	Loss Ratio Excluding LAE	Best's LAE (Loss Adjustment Expense)	Best's Underwriting Expense	Combined Ratio (4)+(5)+(6)	Investment Gain and Other Income	Operating Ratio (7)-(8)
2012	76	\$84,934	-3%	32%	25%	23%	80%	16%	64%
2013	74	\$81,528	-4%	38%	25%	23%	86%	16%	70%
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%	31%	31%	25%	140%	14%	126%

Data source: NAIC Annual Statements filed annually by Insurance Companies & *Best's Aggregates & Averages* (2017 Data not yet available.)

In most instances, this level of profitability indicates a healthy marketplace. 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 31% of premiums during 2016. For private passenger auto liability, the property-casualty insurance line with the most premium volume, claims administrative expenses averaged 14% in 2016.

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 7% to a high of 27% 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 \$0.4 million in medical malpractice coverage for nursing homes from July 1, 2017, through June 30, 2018.
- Large groups are often self-insured, join a Risk Retention Group or have their own captive insurer. Data on their loss experience, costs and expenses is not available to Commerce². 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.

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

² Facilities do have to report "adverse health events" to the Commissioner of the Minnesota Department of Health.

care costs and investment income.