INSURANCE ADMINISTRATION

2011 Report on the Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland

August 2011

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Executive Summary

The availability and the cost of medical professional liability insurance (hereinafter "malpractice insurance") have far-reaching consequences for Maryland's health care system. When dramatic premium increases threatened to undermine Maryland's health care system, the General Assembly intervened in 2004 and 2005 to stabilize the malpractice insurance market and, in addition, directed the Maryland Insurance Administration ("MIA") to collect pertinent data about medical malpractice insurance. The data is summarized in Exhibits A through L.

Medical malpractice insurance is available from admitted insurers, surplus lines insurers and risk retention groups. The number of companies offering medical malpractice insurance in Maryland has remained relatively stable over time. However, this is a highly concentrated market. In 2010, two companies wrote about 62 percent of all medical malpractice insurance premiums.

Medical malpractice insurance can be a highly volatile line of insurance. Medical malpractice insurance premiums increased significantly between 2002 and 2005 then decreased or remained the same through 2011. For the first time since 2005, that largest writer of medical malpractice insurance has proposed a rate increase for 2012.

Introduction

The availability and the cost of medical professional liability insurance (hereinafter "malpractice insurance") have far-reaching consequences for Maryland's health care system. While health care providers are not required by law to purchase and maintain malpractice insurance, providers cannot participate in health care networks supporting preferred provider organizations, health maintenance organizations or managed care organizations unless they carry medical malpractice insurance. The cost of medical malpractice insurance is a part of the overall practice costs for providers; as these costs increase, so does the pressure on health insurers to pay providers more.

Malpractice insurance premiums began to increase in 2002 and jumped dramatically in 2003 and 2004. Because of the widespread implications of malpractice insurance, the General Assembly intervened in 2004 and 2005 to stabilize this market. In addition, the General Assembly directed the Maryland Insurance Administration ("MIA") to collect data on closed claims and to report annually pertinent facts about this important line of insurance.

This report provides information about the number of insurers actively writing malpractice insurance, the premium rates for selected medical specialties, and data regarding closed malpractice claims.

Malpractice Insurance Market

Different types of companies are authorized to write malpractice insurance in the State. These include admitted insurers, surplus lines insurers and risk retention groups. These companies provide malpractice insurance for all types of health care providers, not

just physicians and surgeons.[1] In 2010, 60 companies wrote malpractice insurance in Maryland. Exhibits A1 through A3 provide detailed information about these companies.

Two companies, Medical Mutual Liability Insurance Society of Maryland ("Medical Mutual") and MCIC VT INC RRG ("MCIC"), wrote about 62 percent of all malpractice insurance premiums in 2010. This demonstrates how highly concentrated this market is and the limited amount of competition in the marketplace.

Medical Mutual is an admitted insurer created by the General Assembly.[2] MCIC is a risk retention group organized under Vermont law and is a non-admitted insurer.[3] Medical Mutual wrote about 44 percent and MCIC wrote about 18 percent of all malpractice insurance in 2010.

Exhibit A4 shows the percentage of malpractice insurance premium written by the top four companies between 2000 and 2010. With the exception of a few years, Medical Mutual's market share has remained around 40 percent. MCIC's market share increased between 2008 and 2009 but fell slightly to 18 percent in 2010.

Malpractice Insurance Premiums

Malpractice insurance premiums increased dramatically between 2002 and 2005. In response to these increases, the General Assembly created the Maryland Health Care Rate Stabilization Fund which operated to subsidize malpractice insurance premiums paid by eligible health care providers to admitted insurers that elected to participate in the program through calendar year 2008.

[1] Refer to the MIA's *Comparison Guide to Medical Professional Liability Insurance Rates ("Comparison Guide")* for a detailed listing of insurers and premiums across the state.
[2] See Chapter 544, Section 1, Laws of Maryland, 1975.
[3] Examples of the risks insured by risk retention groups are the Johns Hopkins Hospital network and the University of Maryland.

Exhibit A5 shows the percentage change in Medical Mutual's rates between 1996 and 2012. Medical malpractice premiums increased the most between 2002 and 2005 then decreased or remained the same through 2011. For the first time since 2005, Medical Mutual has proposed a rate increase (4 percent) for 2012.

Malpractice insurance premiums vary by specialty, policy limits and practice location. Exhibits B through E provide premium comparisons for 18 different specialties utilizing a base premium for policy limits of $1 million per incident/$3 million annual aggregate for the years 2008 through 2011. Although the premium may differ for a given company in a given specialty, overall these exhibits show a general decline in malpractice insurance premiums over this time period.

These exhibits also highlight the differences in premiums between companies. To assist providers in shopping for malpractice insurance, the MIA annually updates the *Comparison Guide*. This guide is available on the Maryland Insurance Administration's website, www.mdinsurance.state.md.us, as well as in brochure form. The *Comparison Guide* allows health care providers to compare general pricing among the major admitted insurers. The *Comparison Guide* now includes surplus lines insurers and risk retention groups to allow health care providers to compare general pricing among all companies offering malpractice insurance in Maryland.

Features of the malpractice insurance, such as the deductible, influence the premium. By law, malpractice insurers are required to offer policies with high deductibles: $25,000, $50,000 and $100,000. Exhibits H and I show that these policies have not been attractive to providers. However, these Exhibits also show that health care providers do, on occasion, purchase policies with deductibles less than $25,000.

Closed Claims

One of the factors driving malpractice insurance premiums is claims frequency. Since 2006, admitted insurers have been required to submit certain closed claim information on a quarterly basis to the MIA.[4] Exhibit J summarizes the data provided to the MIA by company and Exhibit K summarizes the data by specialty.

While closed claims increased overall by 56.5% from 2005 to 2010, there are significant yearly fluctuations. Some of this fluctuation may be attributable to the manner in which this data has been collected by the MIA[5] and no significant conclusions can be drawn from such newly collected data which has not yet obtained any degree of credibility.

Conclusion

The number of companies offering medical malpractice insurance in Maryland has remained relatively stable over time. However, this is a highly concentrated market. In 2010, two companies wrote about 62 percent of all medical malpractice insurance premiums.

Medical malpractice insurance premiums increased significantly between 2002 and 2005 then decreased or remained the same through 2011. For the first time since 2005, that largest writer of medical malpractice insurance has proposed a rate increase for 2012.

[4] The total number of suits is also reported by company. See Exhibit L. As this Exhibit shows, the total number of suits filed is nearly identical to the total number of closed claims.

[5] The MIA had initially used one form of on-line reporting, but that tool became unworkable and the data is now collected using a different tool that enables the MIA to access and query the data more easily. This change in systems may have resulted in a change in data collection.