



**2007 Report on the Availability and  
Affordability of Health Care Medical  
Professional Liability Insurance in Maryland**

**September 2007**

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## **I. Preface**

The Maryland Insurance Administration (“MIA”) was created as an independent state agency by the Maryland General Assembly in 1993. Among other things, the MIA is charged with:

- Monitoring the solvency of Maryland entities that engage in the business of insurance;
- Encouraging competition within the insurance industry;
- Protecting consumers from fraud, misrepresentation, and unfair trade practices;
- Ensuring that consumers are treated fairly and with respect;
- Combating insurance fraud; and
- Regulating the insurance industry.

Pursuant to Section 4-405(e) of the Insurance Article, the Commissioner is required to report, in accordance with §2-1246 of the State Government Article, the Commissioner's findings as to the impact of Chapter 5 of the Acts of the 2004 Special Session of the General Assembly and Chapter 477 of the Acts of the General Assembly of 1994 on the availability of health care medical professional liability insurance in the State to the Legislative Policy Committee on or before September 1 of each year. This report reflects the information through August of 2007.

## **II. Availability**

Title 11 of the Insurance Article sets forth the insurance rating laws for companies engaging in the business of insurance in the State of Maryland. Title 11, Subtitle 2, specifically requires prior approval rate-making laws be applied to certain lines of business; including, medical professional liability insurance. The primary purpose of prior approval

rate-making is to protect the public welfare by regulating certain insurance rates and prohibiting their implementation and use until such time as the Commissioner finds that the proposed rates are not excessive, inadequate, or unfairly discriminatory. However, the intent of the law is not to prohibit or discourage reasonable competition among carriers offering this type of insurance within the State.

During Calendar Year 2006, there were 106 licensed companies, including surplus lines and risk retention groups, licensed to and providing medical professional liability insurance for all types of healthcare providers in the State of Maryland.<sup>1</sup> Of the 106 companies, seven (7) of these carriers are admitted insurers<sup>2</sup> providing coverage for Maryland physicians and surgeons and these seven companies comprise approximately 62.11% of the market. *See Exhibits A and A2.*

As shown in Exhibits A and A2, The Medical Mutual Liability Insurance Society of Maryland ("Medical Mutual") continues to be the largest provider of medical professional liability insurance to physicians and surgeons in the State with a 42.99% share of the market in 2006. Medical Mutual was created pursuant to Chapter 544, Section 1, Laws of Maryland, in 1975 to respond to the limited market availability of such coverage prior to passage of tort reform measures by the General Assembly. Since 1975, Medical Mutual has grown to become the largest provider of this type of coverage for physicians and surgeons practicing in the State.

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<sup>1</sup> Surplus lines carriers and risk retention groups are subject to limited regulation by the State and the MIA does not have prior approval over the rates these carriers charge.

<sup>2</sup> Admitted insurers are subject to the full regulatory control given to the MIA by the State. Please note that the number 7 is somewhat misleading since this includes both NCRIC and The Medical Assurance Company when NCRIC is in the process of withdrawing from the State while The Medical Assurance Company is writing NCRIC's renewal business.

Despite the growth of Medical Mutual and its large market share, the MIA has continued to try to encourage competition in this line of business. In September 2005, the MIA received an application from a company that was seeking to enter Maryland's medical professional liability insurance market with hopes of writing non-assessable professional liability policies for physicians and surgeons in 2006. This new carrier, the Maryland Healthcare Providers Insurance Exchange (“MDHPIX”), was granted a Certificate of Authority as an admitted carrier and its rates and forms were approved effective May 15, 2006. This new carrier will insure physicians and surgeons, as well as other healthcare providers, such as, but not limited to, nurse midwives, Certified Registered Nurse Anesthetists (“CRNAs”), and nurse practitioners. As an admitted carrier, MDPHIX was eligible to and elected to participate in the Maryland Health Care Provider Rate Stabilization Fund. Thus, it requested monies on behalf of its insureds in accordance with Section 19-803(d)(1) of the Insurance Article. Since it began writing new business in the State, MDHPIX acquired a 1.05% share of the market in 2006.

Another change in Maryland's medical professional liability marketplace surrounds the acquisition of NCRIC by the ProAssurance Group. As a result, ProAssurance made the business decision to limit the writings of NCRIC policies to the District of Columbia. Thus, NCRIC filed a plan of withdrawal in accordance with §27-603 of the Insurance Article with the MIA. This plan of withdrawal was approved by the MIA in July of 2006 and effective September 1, 2006 NCRIC stopped accepting any new business from Maryland physicians or surgeons. Effective September 5, 2006, those physicians and surgeons who were insured by NCRIC received Notices of Non-renewal; however, those same insureds, who would have been eligible for renewal by NCRIC, were given the opportunity to apply for insurance

through another member of the ProAssurance Group, The Medical Assurance Company, Inc. (“Medical Assurance”). Thus, while NCRIC withdrew from the Maryland marketplace, its withdrawal has had no real effect as it was replaced by a different entity owned by the same group, Medical Assurance. Since it began writing new business, Medical Assurance has acquired by 0.52% share of the market in 2006. While continuing to non-renew its book of business, NCRIC’S 2006 market share has fallen, as would be expected from a company that has stopped writing new business; however, the MIA hopes to see continued growth in Medical Assurance.

### **III. Affordability**

As a result of rising premium costs for medical professional liability insurance and the impact it was having on patients’ access to quality health care, the Maryland General Assembly was called into Special Session in December of 2004 and HB 2 was the result. HB 2 was corrected by additional legislation during the 2005 Session which resulted in SB 836. As a result of this legislation, the Maryland Health Care Rate Stabilization Fund was created and rising medical professional liability insurance rates charged by an admitted carrier were able to be subsidized, in part, by the State.<sup>3</sup> The Fund consists primarily of premium tax revenue collected from health maintenance organizations and managed care organizations. Money allocated to the Fund’s Rate Stabilization Account is meant to subsidize medical professional liability insurance premiums paid by eligible health care providers. The subsidy

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<sup>3</sup> Pursuant to SB 836, the premium increase was limited to 5% in calendar year 2005 policies over what the physicians and surgeons had paid in 2004.

factor in calendar year 2006 was impacted by the unanticipated decision of Medical Mutual not to seek a rate increase for calendar year 2006.<sup>4</sup>

With regard to rates, Medical Mutual reduced its rates for physicians and surgeons using an overall base rate **decrease** of 8% that was effective January 1, 2007. The rate decrease was made pursuant to Section 11-209 of the Insurance Article. Subsequently, the MIA requested and received a full rate filing from Medical Mutual. The data revealed that Medical Mutual's rate decrease was based on its experience which showed a reduction in frequency of claims.<sup>5</sup> To date, Medical Mutual has not filed for any rate change effective January 1, 2008.<sup>6</sup>

The only real rate increase of medical professional liability insurance for Maryland physicians and surgeons in 2007 was a 5% rate increase filed by Preferred Professional Insurance Company ("PPIC"); however, even with this increase, its rates were still below that of some of its competitors.

Exhibits B through E display a comparison of medical professional liability premiums for four specialties: Emergency Medicine, Family Practice, and OB/GYN, and Neurosurgeons; and are broken out by insurer and by territory<sup>7</sup>. The premiums are base premiums for policy limits of \$1,000,000 per incident/ \$3,000,000 annual aggregate based

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<sup>4</sup> As a result, the subsidy factor for policies renewing in calendar year 2007 has been determined to be 17%. The MIA will submit a separate report dealing with the Rate Stabilization Fund in accordance with Section 19-808 of the Insurance Article.

<sup>5</sup> Medical Mutual's full rate filing was not received until the spring of 2007. As Medical Mutual is the insurer with the most credible data for Maryland physicians and surgeons, the MIA anticipates that other carriers will use Medical Mutual's data to adjust their rates.

<sup>6</sup> Historically, if Medical Mutual were seeking a rate increase, which requires the prior approval of the Insurance Commissioner, as well as notice to its insureds of its requested rate increase, it will make such a filing in June or July to enable the Administration to review the filing, schedule a hearing if requested and issue an Order all in sufficient time to enable the company to get its bills out to its insureds well in advance of the common January 1<sup>st</sup> renewal date. If Medical Mutual were to seek another rate decrease, pursuant to Section 11-209 of the Insurance Article, it would have to notify the MIA no later than 30 days after the effective date of the decrease or by January 31, 2008.

<sup>7</sup> Territory 1 consists of Baltimore City and Baltimore County, Territory 2 includes Anne Arundel, Howard, Montgomery and Prince George's Counties, and Territory 3 is the rest of the State.

upon mature claims-made rates in effect on July 1, 2007 and show the six companies that are writing new business in the State: Medical Mutual, Medical Protective Company (“Medical Protective”), The Doctors Company, Medical Assurance, PPIC and MDHPIX.

Exhibits B1 - B3 compare the premiums for Emergency Medicine among the six admitted insurers by territory. Only one insurer does not have rates available for an Emergency Medicine physician; PPIC.

Exhibits C1 - C3 compare the premiums for Family Practice among the six admitted insurers by territory. All six insurers have a rate for a Family Practitioner.

Exhibits D1 - D3 compare the premiums for OB/GYN physicians among the six admitted insurers by territory. All six insurers have a rate for an OB/GYN physician.

Exhibits E1 - E3 compare the premiums for Neurosurgeons among the six admitted insurers by territory. All six insurers have a rate for a Neurosurgeon.

Further, in accordance with the recently enacted Section 2-303.2 of the Insurance Article, the MIA has updated its *Comparison Guide to Maryland Medical Professional Liability Insurance Rates*, which will be on the MIA website and available in brochure form shortly. The October 2007 edition of the *Comparison Guide* will include the premiums being charged by the two new carriers for physicians and surgeons, MDHPIX and Medical Assurance, as well as carriers writing medical professional liability insurance for other types of healthcare providers. The MIA will continue to update this Comparison Guide on an annual basis in order to assist consumers of medical professional liability insurance with a starting point for shopping and allowing them an ability to compare general pricing among insurers.



#### **IV. Deductibles**

Pursuant to §19-114 of the Insurance Article, each insurer that issues or delivers a medical professional liability insurance policy in the State shall offer at a minimum, in addition to the basic policy, policies with deductibles in the following amounts: \$25,000, \$50,000; and \$100,000. Despite this mandatory offer of deductibles, there are few policyholders who have elected to purchase a medical professional liability insurance policy with any of these deductibles. Last year, only 3 insureds elected to purchase a policy with one of these deductibles<sup>8</sup>. To date the following insurers have provided the following data:

- Medical Mutual: No policyholders elected to purchase a policy with any of the statutory deductibles.
- Medical Assurance/NCRIC: No policyholders elected to purchase a policy with any of the statutory deductibles.
- The Doctors Company: No policyholders elected to purchase a policy with any of the statutory deductibles.
- Medical Protective: No policyholders elected to purchase a policy with any of the statutory deductibles.
- MDHPIX: No policyholders elected to purchase a policy with any of the statutory deductibles.
- PPIC: No policyholders elected to purchase a policy with any of the statutory deductibles.
- Interstate Fire and Casualty Company: No policyholders elected to purchase a policy with any of the statutory deductibles.
- NCMIC: Three policyholders elected to purchase policies with statutory deductibles: one policy with a \$25,000 deductible, one policy with a \$50,000 deductible and one policy with a \$100,000 deductible.

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<sup>8</sup> One insured purchased a Medical Mutual policy with a \$25,000 deductible, and two chiropractors purchased NCMIC (insures chiropractors) policies with deductibles, one for \$50,000 and one for \$100,000.

## **V. Past Reports**

The MIA's past reports on the availability and affordability of health care medical malpractice insurance in Maryland were completed and submitted to the Legislative Policy Committee in accordance with Chapter 639 of the Acts of 1986. However, that reporting requirement sunsetted on October 31, 2001. Additionally, Maryland Regulation COMAR 31.08.07, Medical Malpractice - Closed Claims Surveys, which provided a mechanism for insurers to report closed claims data to the MIA, was repealed effective October 27, 2003. Thus, there has been no mechanism in place for the MIA to collect, analyze and monitor the medical professional liability insurance market for some period of time.

Pursuant to Section 4-405 of the Insurance Article, enacted in 2005, the MIA has resumed its reports to the Legislative Policy Committee regarding the availability of health care medical professional liability insurance in the State. This is the third annual report. As the MIA has now begun collecting data surrounding medical malpractice claims, we hope to be able to monitor trends in the medical professional liability insurance marketplace. Once the data is collected, it should prove useful in reviewing the relationship between medical professional liability insurance rates and awards and settlements. However, this data will not be collected overnight and it will take some period of time to build the database upon which a thorough analysis can be based.

## **VI. COMAR 31.08.10**

In order to collect the data as required by statute, the Commissioner adopted regulations on the submission of information and requires medical professional liability insurers to report claims data via an on-line survey which is to be completed on a quarterly

schedule. Exhibit F is the regulation, COMAR 31.08.10, Medical Professional Insurers Online Claim Survey Reporting Requirements, which became effective May 22, 2006.

## VII. Closed Claim Data

To date, the data submitted by insurers in response to the new regulation are with respect to claims that were closed in 2006 and claims that were closed in the first two quarters of 2007. This report focuses on closed claims dealing with physicians and surgeons as reported by Medical Mutual, PPIC, NCRIC, Inc., Medical Protective, The Doctors Company and OHIC Insurance Company<sup>9</sup>; the data collected does not include any information regarding medical malpractice claims against self-insured hospitals.<sup>10</sup>

Using the closed claims data the MIA has collected to date, the following information can be provided:

- The Number of Claims by Specialty:
  - Emergency Medicine: 29
  - Family Practice: 27
  - Neurosurgeons: 5
  - OB/GYN: 26
  
- The Number of Verdicts for the Plaintiff greater than \$1 Million<sup>11</sup> was 2:

One closed claim was reported in which an award was entered in favor of the Plaintiff in the amount of \$1,750,000. This suit was filed in the Baltimore County Circuit Court.

The other claim that was reported in which an award was made by court verdict in favor of the plaintiff in the amount of \$2,500,000. This suit was filed in Prince Georges County.

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<sup>9</sup> OHIC Insurance Company ceased writing new policies for physicians in Maryland effective March 1, 2004 and began withdrawing from the market and non-renewing policies effective March 1, 2005. However, since the company is still closing claims, it will continue to report closed claims in compliance with the new regulation

<sup>10</sup> This report does not comment on claims made against self-insured hospitals as these claims are not required to be reported to the MIA under §4-405 of the Insurance Article.

<sup>11</sup> For verdicts categorized as such, we looked at the jurisdictions where these verdicts occurred, as well as a breakdown of the amounts awarded for past medical expenses, future medical expenses, past lost wages, future lost wages, non-economic damages, and other damages claimed by the plaintiff.

- The Number of Claims by Jurisdiction: See Exhibit G at the end of this report for a list by jurisdiction of the number of closed claims that were filed in court.
- The Number of Claims by Company: Those companies that reported closed claims as of the writing of this report include:
  - Medical Mutual: 355
  - The Doctors Company: 152
  - Medical Protective: 147
  - NCRIC: 109
  - OHIC: 52
  - PPIC: 16
  - PICA: 10
  - Executive Risk Indemnity: 4
  - National Union Fire Insurance Company of Pittsburgh: 3
  - Lexington Insurance Company: 2
  - Interstate Fire and Casualty Company: 1

### **VIII. Summary**

Currently, Maryland's physicians and surgeons have a broader choice of insurers<sup>12</sup> than previously available to them when considering their professional liability insurance needs. Under the prior approval rate-making laws of Maryland, it does not appear that competition is prohibited or discouraged; nor that medical professional liability coverage is not available in the admitted market.

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<sup>12</sup> Please note that not all physicians and surgeons will be eligible for coverage with each of the carriers identified. Each company operates with separate and distinct underwriting guidelines which reflect the amount and type of risk they are willing to insure.

Maryland physicians and surgeons have choices with respect to coverages and pricing through licensed insurers, as well as various surplus lines carriers and risk retention groups. The entry of MDHPIX, into the medical professional insurance market in May 2006 provided additional choice for Maryland physicians. While NCRIC has withdrawn from the Maryland marketplace, it has been replaced with Medical Assurance so the number of admitted carriers available to provide medical professional liability coverage in the State remains stable. Further, the affordability of medical professional liability insurance has been eased by the Rate Stabilization Fund which provides State monies to assist physicians in paying for their medical professional liability insurance by providing a partial subsidy of their premiums and by a decrease in the frequency in claims which is translating into a decrease in rates as evidenced by Medical Mutual's 8% rate decrease effective January 1, 2008.

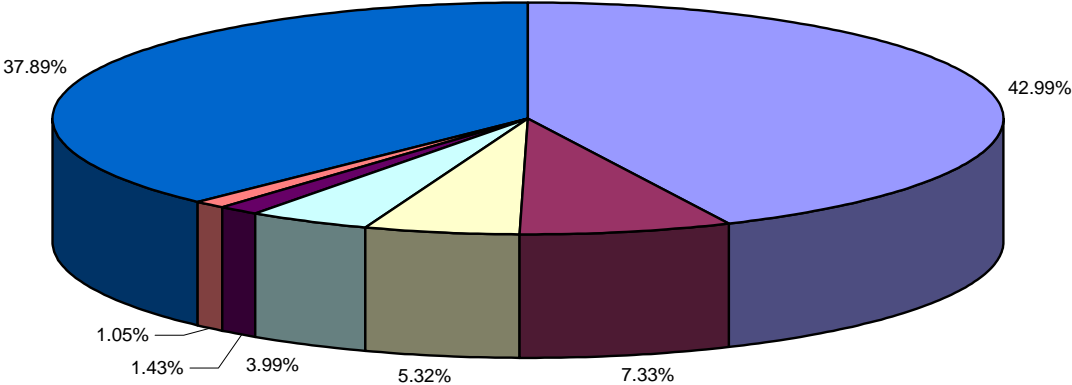
The Maryland Insurance Administration regulates the medical professional liability market by:








- Approving rates in advance (prior approval) to ensure that they are not excessive, inadequate or unfairly discriminatory;
- Publishing a professional liability insurance premium comparison guide to assist healthcare providers in comparing premiums so they can make informed choices with regard to the medical professional liability insurance they may elect to purchase; and
- Collecting closed claim data to enable the MIA to review, analyze and assess the condition of the medical professional liability insurance market within the State.

## IX. Exhibit List

- Exhibit A1:** Distribution of Market Share of Medical Professional Liability Insurance in Maryland 2006
- Exhibit A2:** Market Share of Medical Professional Liability Insurance in Maryland 2006
- Exhibit B1:** Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Baltimore City and Baltimore County, Territory 1
- Exhibit B2:** Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2
- Exhibit B3:** Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Rest of State, Territory 3
- Exhibit C1:** Comparison of Annual Medical Professional Liability Premiums for Family Practice, Baltimore City and Baltimore County, Territory 1
- Exhibit C2:** Comparison of Annual Medical Professional Liability Premiums for Family Practice, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2
- Exhibit C3:** Comparison of Annual Medical Professional Liability Premiums for Family Practice, Rest of State, Territory 3
- Exhibit D1:** Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Baltimore City and Baltimore County, Territory 1
- Exhibit D2:** Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2
- Exhibit D3:** Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Rest of State, Territory 3
- Exhibit E1:** Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons, Baltimore City and Baltimore County, Territory 1
- Exhibit E2:** Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2
- Exhibit E3:** Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons, Rest of State, Territory 3
- Exhibit F:** Maryland Regulation COMAR 31.08.10: Medical Professional Insurers On-Line Claim Survey Reporting Requirements
- Exhibit G:** Number of Claims by Jurisdiction

**Exhibit A1**  
**Distribution of Market Share of Medical Professional Liability Insurance in Maryland**  
**2006**



	Medical Mutual Liability Insurance Society of Maryland
	Doctors Company
	Medical Protective Company
	Medical Assurance/NCRIC
	Preferred Professional Insurance Company
	MDHPIX
	*All Other

Note: \*All Other includes surplus lines, risk retention groups, and carriers who insure healthcare providers and surgeons.

**Exhibit A2**  
**Market Share of Medical Professional Liability Insurance in Maryland 2006**

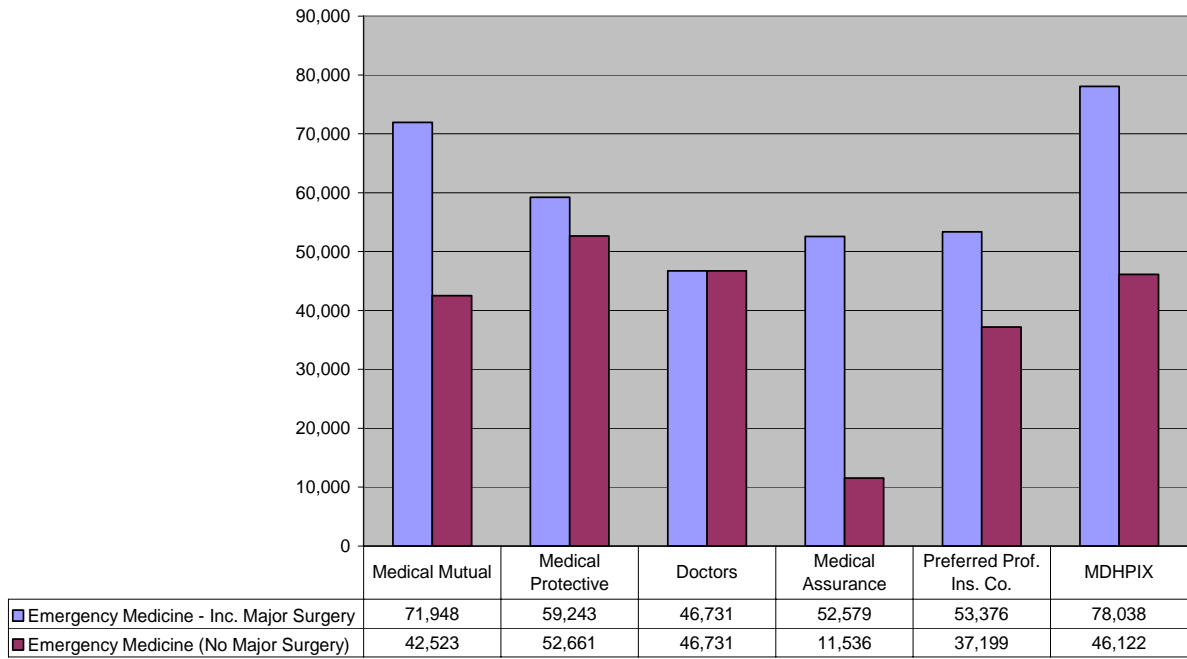
<b>Name of Insurer</b>	<b>2006 Market Share</b>
<b>Medical Mutual Liability Insurance Society of Maryland</b>	<b>42.99%</b>
<b>Doctors Company</b>	<b>7.33%</b>
<b>Medical Protective Company</b>	<b>5.32%</b>
<b>Medical Assurance/NCRIC</b>	<b>3.99%</b>
<b>Preferred Professional Insurance Company</b>	<b>1.43%</b>
<b>MDHPIX</b>	<b>1.05%</b>
<b>*All Other</b>	<b>37.89%</b>
<b>Total</b>	<b>100.00%</b>

Note:

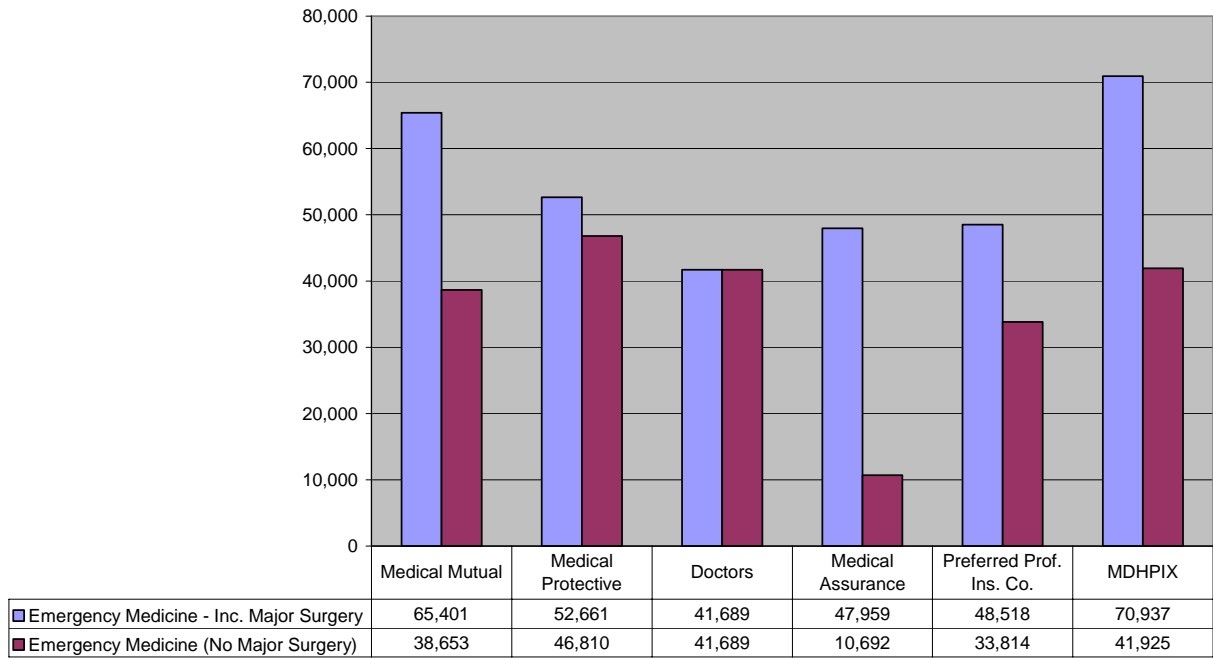
\*All Other includes surplus lines, risk retention groups, and carriers who insure healthcare providers and surgeons.



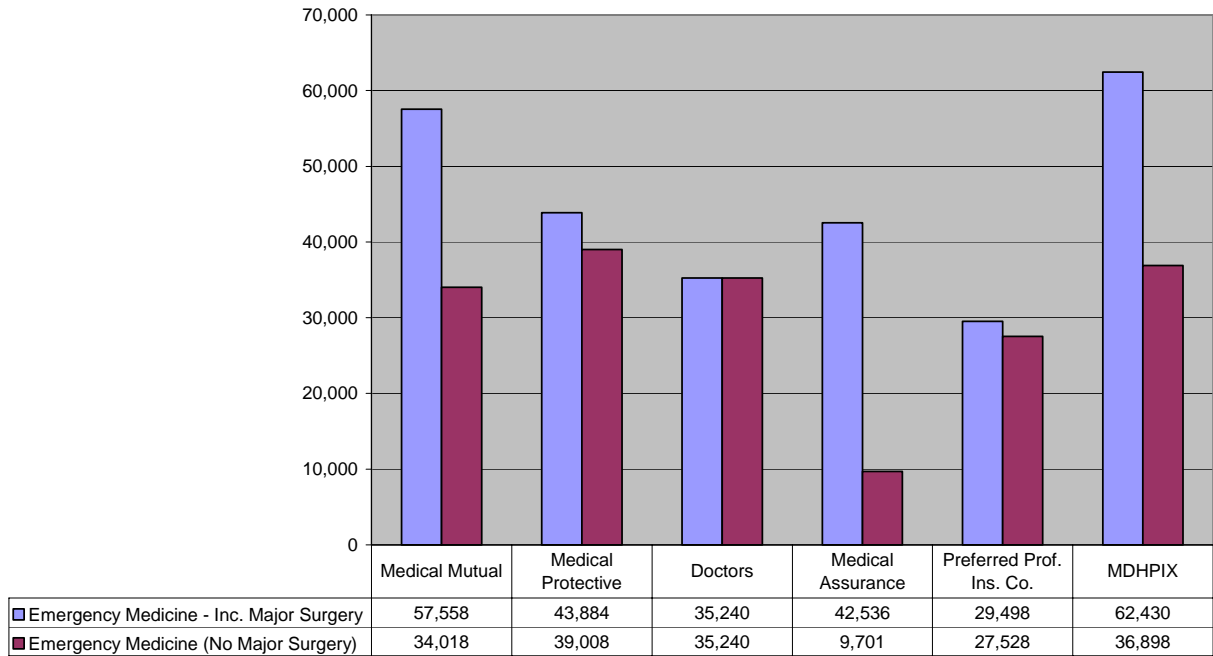
**Exhibit B1**  
**Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine**  
**Baltimore City and Baltimore County**  
**Territory 1**



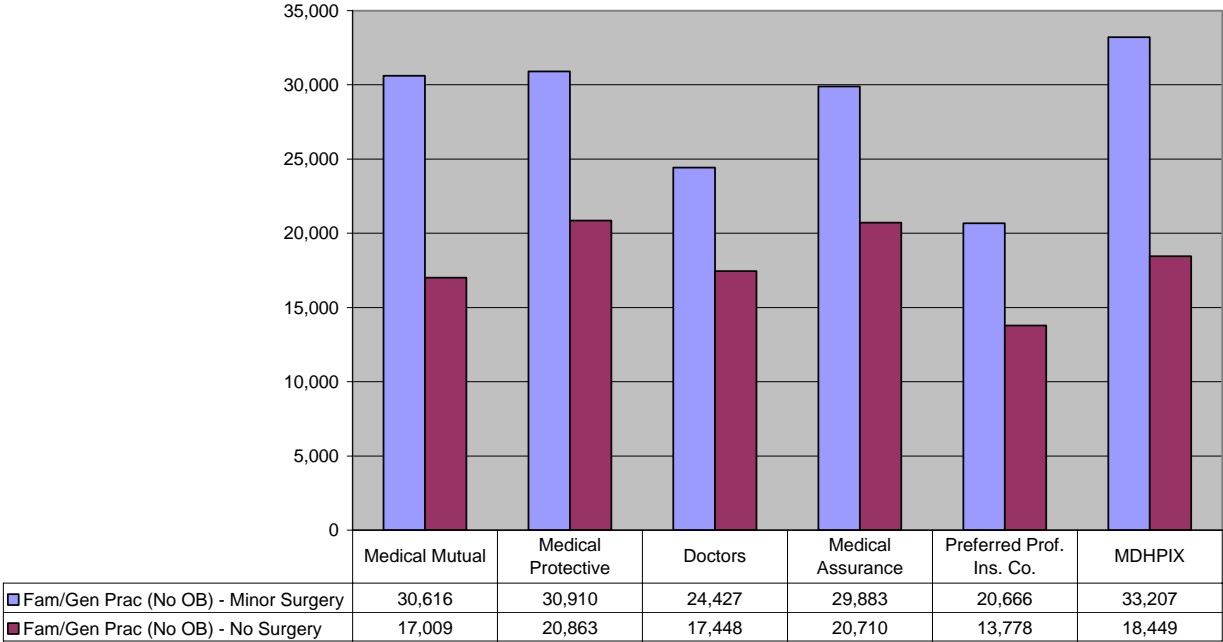
**Exhibit B2**  
**Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine Anne**  
**Arundel, Howard, Montgomery, and Prince George's Counties**  
**Territory 2**



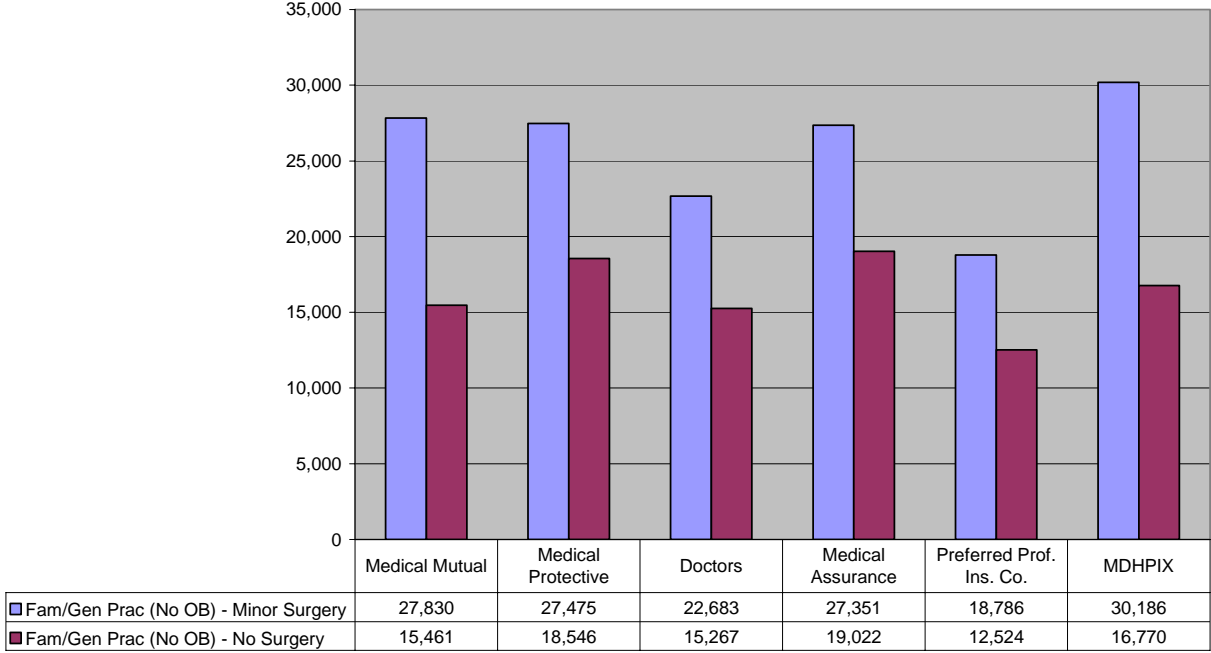
**Exhibit B3**  
**Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine**  
**Rest of State**  
**Territory 3**



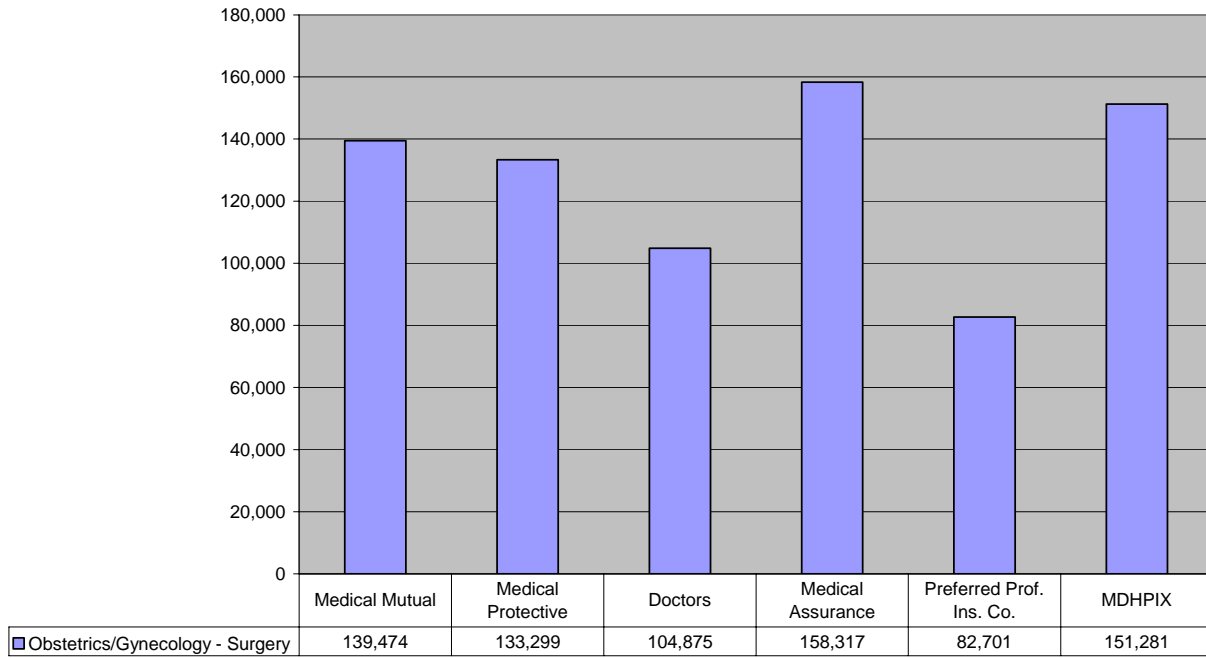
**Exhibit C1**  
**Comparison of Annual Medical Professional Liability Premiums for Family Practice**  
**Baltimore City and Baltimore County**  
**Territory 1**



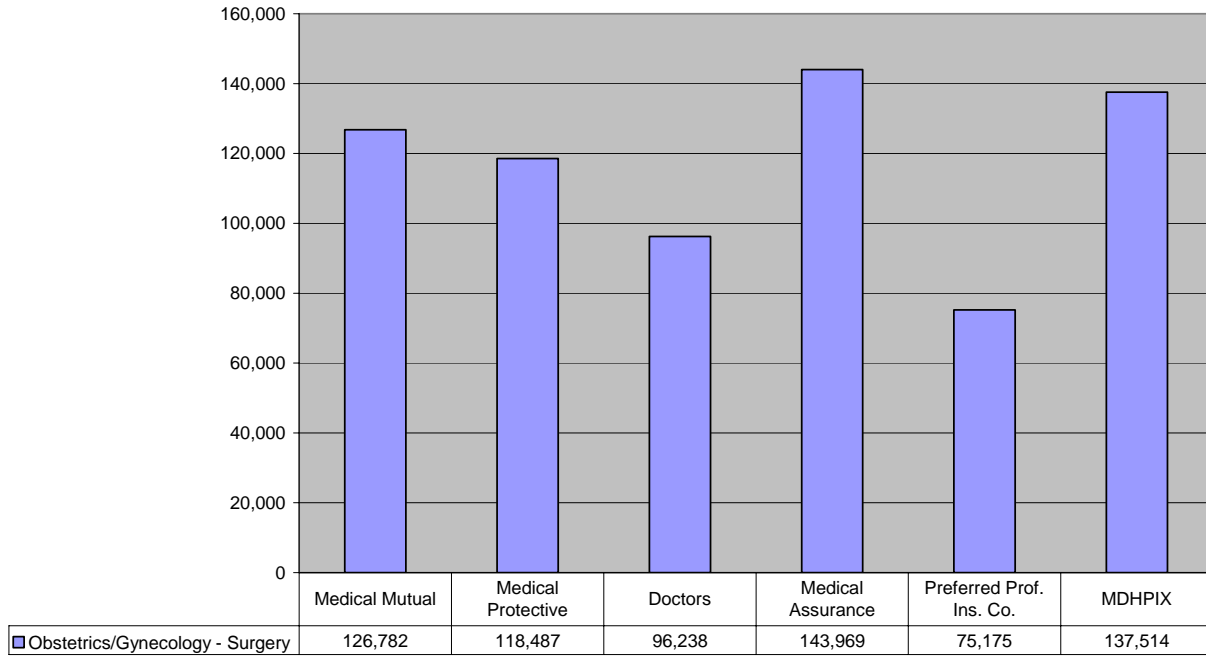
**Exhibit C2**  
**Comparison of Annual Medical Professional Liability Premiums for Family Practice**  
**Anne Arundel, Howard, Montgomery and Prince George's Counties**  
**Territory 2**



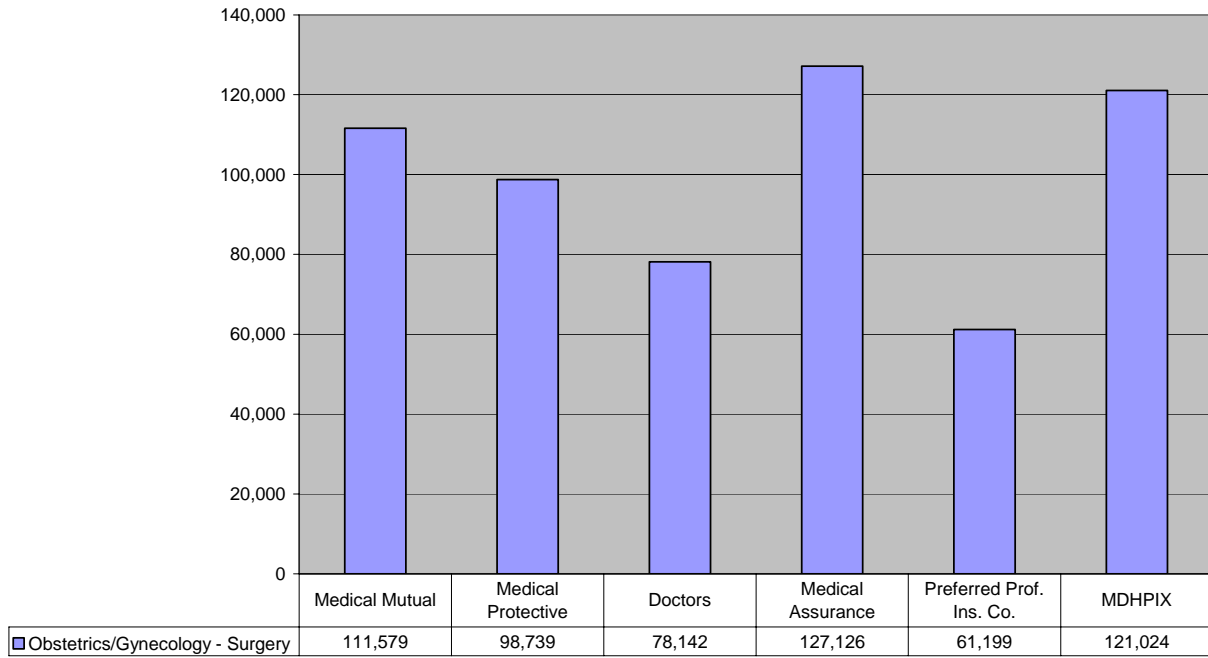
**Exhibit D1  
Comparison of Annual Medical Professional Liability Premiums for OB/GYN  
Baltimore City and Baltimore County  
Territory 1**



**Exhibit D2**  
**Comparison of Annual Medical Professional Liability Premiums for OB/GYN**  
**Anne Arundel, Howard, Montgomery, and Prince George's Counties**  
**Territory 2**

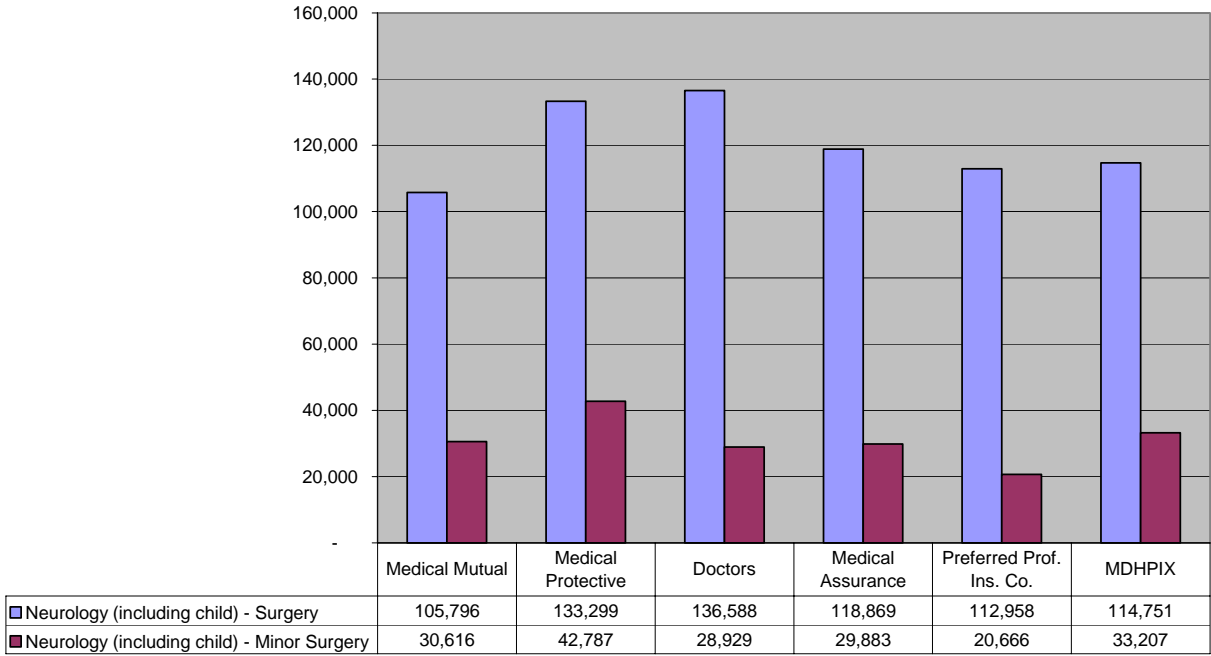


**Exhibit D3  
Comparison of Annual Medical Professional Liability Premiums for OB/GYN  
Rest of State  
Territory 3**

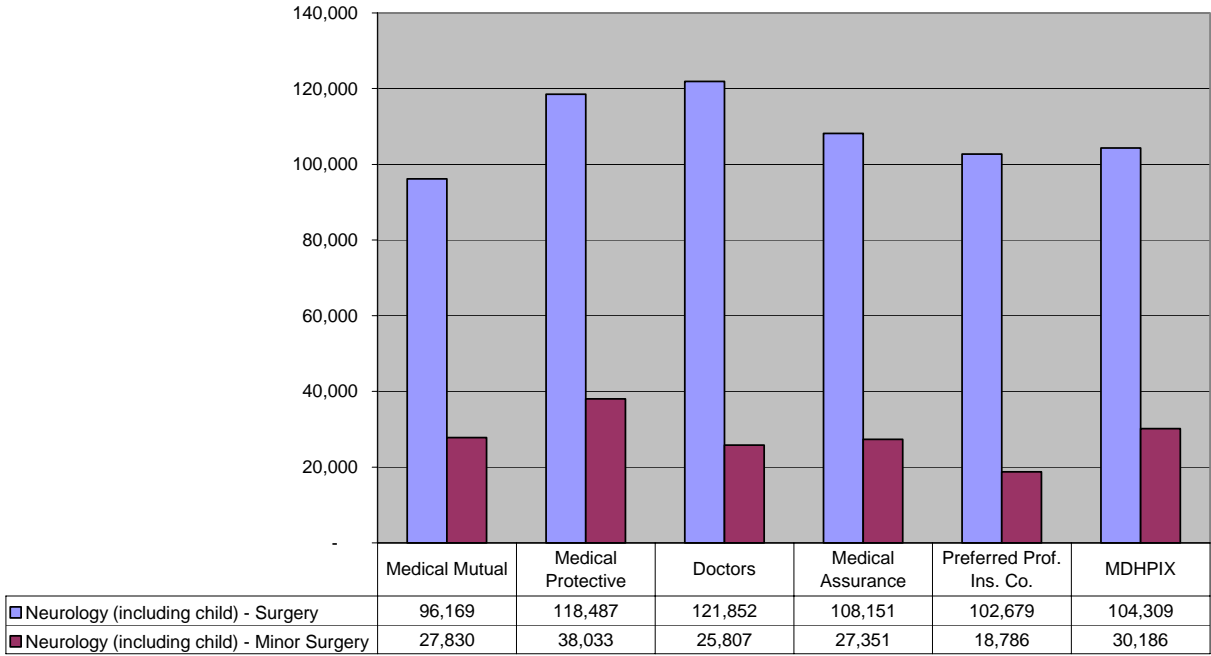




**Exhibit E1**  
**Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons**  
**Baltimore City and Baltimore County**  
**Territory 1**



**Exhibit E2**  
**Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons**  
**Anne Arundel, Howard, Montgomery and Prince George's Counties**  
**Territory 2**



**Exhibit E3  
Comparison of Annual Medical Professional Liability Premiums for Neurosurgeons  
Rest of State  
Territory 3**

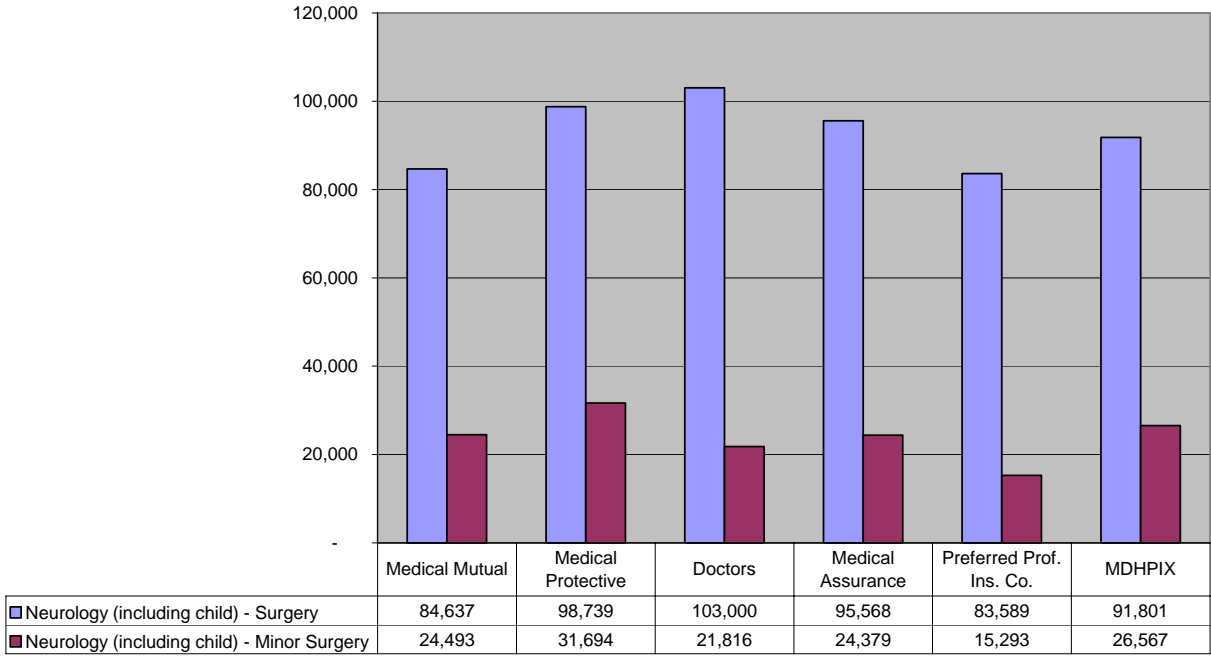


Exhibit F

31.08.10.00

# **Title 31 MARYLAND INSURANCE ADMINISTRATION**

## **Subtitle 08 PROPERTY AND CASUALTY INSURANCE**

### **Chapter 10 Medical Professional Insurers Online Claim Survey Reporting Requirements**

**Authority: Insurance Article, §§4-401 and 4-405, Annotated Code of Maryland**

31.08.10.01

#### **.01 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Amount paid to claimant" means the amount of claim settlements and claim awards.
- (2) "Closed claim" means a claim filed with the Director of the Health Care Alternative Dispute Resolution Office under Courts and Judicial Proceedings Article, §3-2A-04, Annotated Code of Maryland, that has resulted in:
  - (a) A final judgment in any amount;
  - (b) A settlement in any amount; or
  - (c) A final disposition that does not result in payment on behalf of the insured.
- (3) "Confidential information" means "confidential commercial information", "confidential financial information", and "financial information" as those terms are used in State Government Article, §10-617(d) and (f), Annotated Code of Maryland.
- (4) "Financial information report" means an annual report as described in Regulation .02 of this chapter.
- (5) "Insurer" means each insurer that provides professional liability insurance to a physician, nurse, dentist, podiatrist, optometrist, or chiropractor licensed under Health Occupations Article, Annotated Code of Maryland, or a hospital licensed under Health—General Article, Annotated Code of Maryland.
- (6) "Neutral expert" has the meaning stated in Courts and Judicial Proceedings Article, §3-2A-09(d)(2), Annotated Code of Maryland.

31.08.10.02

## **.02 Financial Information Report.**

A. Scope. An insurer that issues professional liability insurance to health care providers in the State shall submit to the Commissioner a financial information report.

B. Confidential Information.

(1) An insurer that submits a financial information report shall notify the Commissioner at the time of the submission of any information contained in the report that the insurer considers to be confidential information.

(2) The Commissioner, in accordance with State Government Article, §10-617(d) and (f), Annotated Code of Maryland, shall deny inspection of any part of a report submitted under this chapter that the Commissioner determines contains confidential information.

C. Filing Requirements.

(1) Insurers shall submit a financial information report by April 30 of each year for the preceding calendar year.

(2) The financial information report shall state, in the aggregate:

(a) The nature and cost of reinsurance for the insurer for the preceding calendar year;

(b) The claims experience, by category, of health care providers insured by the insurer during the preceding calendar year;

(c) The amount paid by the insurer under claim settlements and claim awards in the preceding calendar year;

(d) The amount of reserves for claims incurred and for incurred but unreported claims held by the insurer at the close of the preceding calendar year; and

*(e) The number of claims settled by the insurer during the preceding calendar year that included structured settlement payments.*

31.08.10.03

## **.03 Closed Claim Survey.**

A. Scope. Each insurer that issues professional liability insurance in the State shall complete and submit to the Commissioner a closed claim survey form, as described in Regulation .04 of this chapter, for each closed claim.

B. Within 90 days after the end of each calendar quarter, an insurer shall complete and submit to the Commissioner the closed claim survey forms for claims closed by the insurer in that quarter.

C. The closed claim survey forms shall be submitted to the Commissioner using an online survey tool made available by the Maryland Insurance Administration.

D. A closed claim that is covered under a primary policy and one or more excess policies shall be reported only by the insurer that issued the primary policy. The insurer that issued the primary policy shall report the total amount, if any, paid with respect to the closed claim, including any amount paid under an excess policy and any amount paid

by the health care provider subject to the claim or by a person other than an insurer on behalf of that health care provider.

E. A closed claim survey form shall be completed and submitted only for a closed claim that arises out of an act or omission alleged to have occurred in the State or that was covered under a policy of professional liability insurance issued in the State. If the act, omission, or injury alleged in the closed claim allegedly occurred outside the State but was subject to resolution under the substantive laws of the State, a closed claim survey form is not to be submitted on that closed claim, unless the closed claim was covered under a policy of professional liability insurance issued in the State.

F. A single closed claim survey form shall be filed for any closed claim that arises out of the same alleged acts or omissions of a health care provider and asserts the same injury, regardless of the number of claimants seeking damages on account of that injury. Any amounts identified on the closed claim survey form in connection with such a closed claim shall reflect all amounts paid to all claimants in that closed claim.

G. If the insurer did not close any claims during a calendar quarter, the insurer need not submit a closed claim survey form but shall so notify the Commissioner in writing within 90 days after the end of the calendar quarter.

*31.08.10.04*

#### **.04 Required Information.**

The following information shall be reported on a closed claim survey form:

- A. Name of insurer;
- B. Name of insurer group;
- C. Claim file identification (ID);
- D. Name of person completing the form;
- E. Telephone number, including area code, of person completing the form;
- F. Date form completed;
- G. Date of injury;
- H. Date injury reported to insurer;
- I. Date claim closed;
- J. Whether the claim was previously reported;
- K. Age of injured person at time of injury;
- L. Gender of injured person at time of injury;
- M. Type of injury, such as wrongful death, permanent disability, or other bodily injury;
- N. Description of injury;

O. Name of health facility where injury occurred;

P. Type of medical professional liability policy, such as occurrence, claims made—basic, or claims made—tail;

Q. Type of patient, such as inpatient, emergency room outpatient, or other outpatient;

R. Physician Insurance Services Office Incorporated (ISO) classification or equivalent classification;

S. Type of health care provider, such as physician-no surgery, surgeon, psychiatrist and related specialties, nurse, nurse midwife, optometrist, pharmacist, chiropractor, podiatrist, psychologist, dentist, hospital, other health care facility, or nurse anesthetist;

T. Physician and surgeon classification, including name of specialty;

U. Health care provider name;

V. Health care provider license number;

W. Policy limits for each claim or medical incident;

X. Policy limits for annual aggregate;

Y. If known, the facility, office, or county where the injury occurred;

Z. Whether the claim is a zero payment claim file;

AA. Full name and location of the court where the suit was filed and the case was tried;

BB. Case or docket number;

CC. Whether settlement was reached or award was made at one of the following stages:

(1) Arbitration;

(2) Mediation before suit was filed;

(3) After suit was filed, but before trial;

(4) During trial, but before court verdict;

(5) Court verdict;

(6) After verdict; or

(7) After appeal was filed;

DD. If settlement was reached or award was made by court verdict, whether the result was:

(1) Directed verdict for plaintiff;

(2) Directed verdict for defendant;

- (3) Judgment notwithstanding the verdict for plaintiff;
- (4) Judgment notwithstanding the verdict for defendant;
- (5) Judgment for plaintiff;
- (6) Judgment for defendant;
- (7) Judgment for plaintiff, after appeal;
- (8) Judgment for defendant, after appeal; or
- (9) Any other;

EE. If there was no final judgment or settlement, the date of the final disposition;

FF. If there was no final judgment or settlement, the reason for the final disposition;

GG. If case did go to trial, whether the case was tried by a jury or tried by a judge;

HH. Total amount paid to the claimant;

II. Amount paid by the insurer;

JJ. Amount paid by the insured due to retention or deductible;

KK. If known, the amount paid by an excess carrier;

LL. If known, the amount paid by the insured due to settlement or award in excess of policy limits, not including deductible or retention amounts;

MM. If known, the amount paid by the insurer due to settlement or award in excess of policy limits, not including deductible or retention amounts;

NN. If known, the amount paid by other defendants or contributors;

OO. A summary of the occurrence from which the claim or action arose;

PP. A description of the misdiagnosis or alleged misdiagnosis made, if any, of the patient's actual condition;

QQ. A description of the procedure giving rise to the claim;

RR. A description of the principal injury giving rise to the claim;

SS. The amount of past medical expenses claimed by the plaintiff;

TT. The amount of future medical expenses claimed by the plaintiff;

UU. The amount of past lost wages claimed by the plaintiff;

VV. The amount of future lost wages claimed by the plaintiff;



WW. The amount of noneconomic damages claimed by the plaintiff;

XX. The amount of other damages claimed by the plaintiff;

YY. Whether a structured settlement or periodic payment was used, and if so:

- (1) The amount of immediate payment;
- (2) The present value of the projected total future payout, that is, the price of the annuity, if purchased;
- (3) The projected total future payout; and
- (4) The cost of the structure;

ZZ. If a neutral expert was used, the findings of a neutral expert witness regarding future medical expenses;

AAA. If a neutral expert was used, the findings of a neutral expert witness regarding future loss of earning;

BBB. If case was tried to verdict:

- (1) The amount awarded for past medical expenses;
- (2) The amount awarded for future medical expenses;
- (3) The amount awarded for past lost wages;
- (4) The amount awarded for future lost wages;
- (5) The amount awarded for noneconomic damages; and
- (6) The amount awarded for other damages;

CCC. The total allocated loss adjustment expense;

DDD. Of the total allocated loss adjustment expense, the amount representing fees paid to defense counsel;

EEE. Of the total allocated loss adjustment expense, the amount of expenses not included in the defense counsel fees;

FFF. Whether there was a claim made for extra contractual damages;

GGG. The amount claimed for extra contractual damages;

HHH. Whether a suit was filed or claim was made for extra contractual damages; and

III. Where the suit for the extra contractual damages claim was filed, including:

- (1) The full name of the court where the suit was filed and the case was tried;
- (2) The case number or docket number;

- (3) Whether the claim settled or was tried;
- (4) If tried, whether the trial was before a judge or jury;
- (5) The amount paid for the extra contractual damages claim; and
- (6) Whether the claim was previously reported to the Commissioner.

*31.08.10.05*

### **.05 Penalties.**

Failure to report in accordance with this chapter may result in the imposition by the Commissioner of a civil penalty of up to \$5,000.

*31.08.10.9999*

### ***Administrative History***

**Effective date: May 22, 2006 (33:10 Md. R. 882)**

### Exhibit G

Jurisdiction where the Suit was Filed and the Case was Tried	Number of Claims
Allegany County Arbitration	2
Allegany County Circuit Court	3
Allegany County District Court	2
Anne Arundel County Arbitration	13
Anne Arundel County Circuit Court	72
Anne Arundel County District Court	2
Baltimore City Arbitration	3
Baltimore City Circuit Court	46
Baltimore City, MD	4
Baltimore County Arbitration	3
Baltimore County Circuit Court	81
Baltimore County, MD Health Claims Court	5
Baltimore County, MD State Circuit Court	6
Baltimore MD Circuit Court	6
Baltimore, MD Health Claims Court	2
Baltimore, MD State Circuit Court	5
Baltimore, MD unknown which court	2
Calvert County Circuit Court	10
Caroline County Circuit Court	1
Carroll County Circuit Court	4
Cecil County Circuit Court	3
Charles County Circuit Court	10
Charles County District Court	1
Frederick County Circuit Court	23
Frederick MD State Circuit Court	1
Harford County Arbitration	4
Harford County Circuit Court	9
Health Care Alternative Dispute Resolution Office	1
Howard County Arbitration	1
Howard County Circuit Court	6
Howard County District Court	2
Kent County Arbitration	3
Kent County Circuit Court	2
Maryland Federal Court	7
Montgomery County Arbitration	3
Montgomery County Circuit Court	53
Prince George's County Arbitration	7
Prince George's County Circuit Court	46
St. Mary's County Circuit Court	5
Talbot County Circuit Court	8
Washington County Arbitration	3
Washington County Circuit Court	17
Wicomico County Circuit Court	15
Worcester County Circuit Court	4

