The Malpractice Report cited the following possible reasons for the spike in medical professional liability insurance: competitive pricing; increasing claims experience, including increasing health care costs, jury awards, and defense and investigation costs; declining investment yields; loss reserve deficiencies; inadequate underwriting and loss control procedures; increasing reinsurance costs; and pressure to consolidate. It was also thought the U.S. economy had an adverse effect on the medical professional liability market, including interest rates, the reinsurance market and investment earnings.

Research indicated that, while net investment income had declined, it was primarily, though not exclusively, underwriting losses that were the driving factor in rate increases experienced by physicians and other health care providers. As a result, the study focused on incurred losses.

During 2003, the legislatures of at least 30 states considered bills intended to stabilize or reduce the cost of medical professional liability insurance. Over the subsequent years, various reforms were put into place on a state-by-state basis to thwart the rising cost of medical professional liability losses. A common goal among the states was reduction in the cost to health care providers and their insurers of awards and settlements. Several solutions were identified: placing caps on noneconomic damages; changing rules of evidence to provide for consideration of collateral sources for payment of benefits; allowing claimants and insurers to agree to periodic payments of future benefits; and limiting contingency fees paid to attorneys. California Proposition 46 was defeated in November 2014, which would have increased the limits for non-economic damages.

**Figure 1: Countrywide Loss and Defense Costs Containment Ratio**

*Incurred loss and direct defense cost containment expenses as a percent of earned income. Source: NAIC.

These legislative trends and a variety of additional factors were credited for the decline in the loss ratio, which reached a trough in 2010 at 51.02%. Reasons cited for the increased profitability include: tort reform; doctor shortages; better risk management; and aggressive claims defense.

In recent years, loss ratios have remained relatively stable. Direct premiums written and earned have been on a steady decline since 2006. Losses incurred enjoyed a corresponding decline from 2006 to 2014. Direct defense and cost containment declined from 2006 to 2013, but jumped 8% from 2013 to 2014. The expanding use of electronic medical record retention, a growing shortage of primary care providers and the enactment of the federal Patient Protection and Affordable Care Act (PPACA), also known as the Affordable Care Act (ACA), were thought to be drivers of imminent change to the medical professional liability line of business. However, Figure 2 on the following page shows otherwise. Very little has changed within the medical professional liability line of business in recent years. In this instance, maybe no news is good news.

According to the Medical Liability Monitor, rates for medical professional liability coverage increased nearly 20% in 2003 and 2004, less than 10% in 2005 and less than 2% in

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2006 and 2007. Rates fell 1.5% in 2014, representing the seventh-straight year of decline and a prolonged soft market cycle.

One measure of competition within a market is the number of insurance groups participating. An increasing number of insurers typically demonstrate a strong market where insurers see opportunity for increased profit. Conversely, a decreasing number of insurers signify a soft market where profits are falling or are expected to decrease. Figure 3 shows the number of insurance groups that sold medical professional liability coverage decreased from 104 in 2012 to 101 in 2013 and remained the same in 2014.

The Herfindahl-Hirschman Index (HHI) is another common measure of competition in a market. The HHI is the sum of the squares of the market shares of all groups in the market. Although there is no precise point at which the HHI indicates an overly concentrated or restricted market, the U.S. Department of Justice developed guidelines for corporate mergers, indicating an HHI of less than 1,000 is considered not concentrated. An increasing HHI means more concentration in the industry. Figure 3 also shows that, although still well below 1,000, the HHI for the medical professional liability market increased from 195 in 2001 to 322 in 2011. The HHI fell to 309 in 2013 and rose again to 313 in 2014. This shows fewer insurers are writing more of the total premiums, resulting in increased market share for the top writers. More information on market competition can be found in the NAIC Competition Database Report.

(Continued on page 21)
There are many speculative reasons insurers may reduce their exposure in the medical professional liability market. The most noteworthy is the passage of the ACA. The ACA, which sought to expand access to health insurance and care, as well as restrict medical costs, included several provisions many speculated would cause a change in liability insurance. Such provisions include: shared responsibility individual mandates; subsidies for small business and individual coverage; Medicaid eligibility expansion; provisions leading to Medicare’s creation of the Hospital Value-Based Purchasing (VBP) Program, as well as revisions to the payment policies and annual payment rates for the Medicare prospective payment system (PPS); funding authorization for the Patient-Centered Outcomes Research Institute; incentives for providers to implement electronic medical records (EMRs) and computerized physician order entry (CPOE); and funding for pilot programs to implement and evaluate malpractice tort reforms.

The NAIC created a forum for discussion and research of potential effects of the ACA on medical professional liability insurance. The Affordable Care Act Medical Professional Liability (C) Working Group was created in December 2012 to study feasible outcomes of the law. The Working Group has heard from many interested parties regarding the impacts the ACA may have on the availability and affordability of medical professional liability insurance, although the actual outcomes are still unknown. One of the topics discussed was the increasing reliance on physician assistants and nurse practitioners to provide care while physicians are coordinating and managing the process. In many states, physician assistants and nurse practitioners are allowed to practice independent of physicians.

The Working Group has also discussed the movement toward EMRs, which may create privacy issues, as well as increased upfront costs for infrastructure implementation and training. Some industry groups have forecast higher frequency and severity of losses due to an increase in medical personnel exposed to loss, as well as more consumers with access to healthcare coverage. So far, the data show premiums and losses have changed minimally in recent years, and the results of the ACA may be unknown for years to come. Information regarding this Working Group can be found on the NAIC website.2

The NAIC publishes market share reports by line of business for property and casualty insurance. The 2014 Medical Professional Liability, Other Liability, and Products Liability Market Share Report for Property and Casualty Groups and Companies contains direct written premium, direct earned premium, direct loss to earned premium ratio, direct loss and direct cost containment to earned premium ratio and market share information for the top 125 companies country-wide, as well as 99% of the marketplace in each jurisdiction.

Note the 2014 Medical Professional Liability, Other Liability, and Products Liability Market Share Report for Property and Casualty Groups and Companies direct written premium is slightly lower than contained in the information on the CIPR website3, as the report includes negative premium from companies that have withdrawn from the medical professional liability line of business.

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1 www.naic.org/committees_c_aca_med_pro_liability.htm
2 www.naic.org/comm_c_aca_med_pro_liability.htm
3 www.naic.org/cipr_home.htm
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