

Beginning in 1997, the loss and direct cost containment ratio for medical professional liability insurance began its ascent, reaching a peak in 2001 of 126.83% (Figure 1). The line sustained five straight years of loss ratios above 100% (1999–2003) and the NAIC among various other industry groups began researching reasons and possible solutions for the crisis. In 2004, the NAIC published the *Medical Malpractice Insurance Report: A Study of Market Conditions and Potential Solutions to the Current Crisis* (Malpractice Report). The Malpractice Report was conducted with the objective of reviewing regulatory and legislative solutions considered in response to a market crisis in availability and affordability of medical liability insurance.<sup>1</sup>

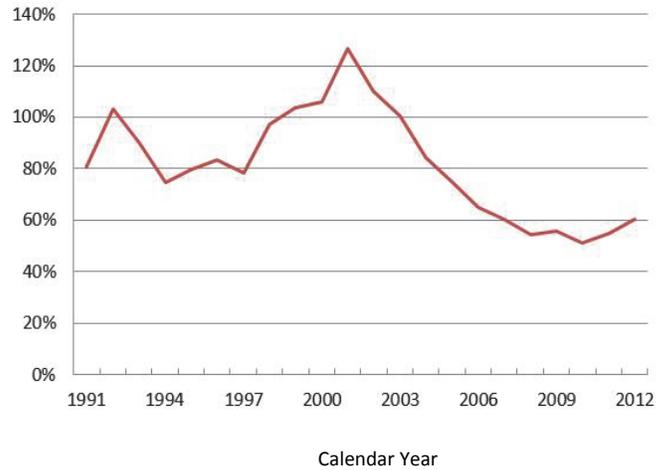
The Malpractice Report cited the following possible reasons for the spike in medical professional liability: competitive pricing; increasing claims experience, including increasing health care costs, jury awards, and defense and investigation costs; declining investment yields; loss reserve deficiencies; inadequate underwriting and loss control procedures; increasing reinsurance costs; and pressure to consolidate. It was also thought that 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. 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.

A reversal of industry trends ensued and the loss ratio dropped nearly 76 points, reaching 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.

**FIGURE 1: COUNTRYWIDE LOSS AND DEFENSE COST CONTAINMENT RATIO\***



\* Incurred loss and direct defense cost containment expenses as a percent of earned premium.

Since 2010, loss ratios have ticked up slightly, with an increase in direct losses incurred and a reduction in direct premiums earned (Figure 2 on the following page). Recent changes within the industry will undoubtedly have an impact on medical professional liability insurance in the future. The expanding use of electronic medical record retention, 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), are high on the list of burgeoning change.

Although probable outcomes are still unknown, the ACA will likely be a key driver of change in the industry. The ACA, which seeks to expand access to health insurance and care, as well as restrict medical costs, includes several provisions that could prompt a change in liability insurance. Such provisions include: shared responsibility individual mandates; subsidies for small business and individual coverage; establishment of annual and lifetime policy limits; 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

*(Continued on page 30)*

<sup>1</sup> This study published by the NAIC in September 2004 can be found at [www.naic.org/documents/topics\\_Med\\_Mal\\_Rpt\\_Final.pdf](http://www.naic.org/documents/topics_Med_Mal_Rpt_Final.pdf) or on the CIPR Key Issues Web page ([www.naic.org/cipr\\_key\\_issues.htm](http://www.naic.org/cipr_key_issues.htm)) under “Medical Professional Liability Insurance.”

DATA AT A GLANCE (CONTINUED)

**FIGURE 2: COUNTRYWIDE SUMMARY OF MEDICAL PROFESSIONAL LIABILITY INSURANCE  
CALENDAR YEAR 2003—2012**

Calendar Year	Direct Premium Written	Direct Premium Earned	Direct Losses Incurred	Direct Defense and Cost Containment Expense Incurred	Loss and DCC ratio*
1991	5,041,116,742	4,974,652,480	2,815,117,139	1,206,401,632	80.84%
1992	5,336,077,118	5,229,476,485	4,039,426,016	1,356,515,347	103.18%
1993	5,451,861,069	5,254,614,981	3,525,005,041	1,223,109,176	90.36%
1994	6,128,761,613	5,986,568,310	3,181,523,258	1,288,672,006	74.67%
1995	6,174,433,133	6,137,209,298	3,330,613,605	1,554,242,912	79.59%
1996	6,087,248,243	6,027,958,481	3,632,388,312	1,406,779,290	83.60%
1997	5,949,762,287	5,949,688,215	3,222,735,496	1,442,161,237	78.41%
1998	6,212,462,137	6,218,164,376	4,457,099,226	1,585,203,841	97.17%
1999	6,181,174,156	6,167,948,760	4,659,896,010	1,726,798,604	103.55%
2000	6,428,278,303	6,373,039,337	5,098,753,650	1,657,371,460	106.01%
2001	7,604,104,289	7,054,509,032	6,972,294,879	1,974,903,227	126.83%
2002	8,912,533,968	9,631,548,967	8,200,307,513	2,412,849,663	110.19%
2003	10,646,907,290	11,277,448,229	8,459,389,539	2,847,849,045	100.26%
2004	11,986,813,417	11,538,819,200	7,224,164,963	2,514,795,515	84.40%
2005	12,145,623,736	11,874,907,423	6,151,942,930	2,713,740,255	74.66%
2006	12,332,430,917	12,167,900,762	5,285,472,723	2,651,577,175	65.23%
2007	11,680,519,170	11,744,160,781	4,787,669,711	2,301,741,443	60.37%
2008	11,210,406,745	11,353,905,915	4,092,787,274	2,108,507,419	54.62%
2009	10,816,183,520	10,835,284,565	4,012,060,052	2,018,784,762	55.66%
2010	10,600,322,059	10,557,651,729	3,524,306,622	1,862,710,616	51.02%
2011	10,287,069,135	10,296,112,512	3,655,161,296	1,973,170,359	54.66%
2012	10,019,229,369	10,099,576,764	4,167,260,437	1,931,017,905	60.38%
<b>Mean</b>	<b>8,510,605,383</b>	<b>8,488,688,482</b>	<b>4,749,789,804</b>	<b>1,898,131,950</b>	<b>81.62%</b>
<b>Median</b>	<b>8,258,319,129</b>	<b>8,343,029,000</b>	<b>4,130,023,856</b>	<b>1,896,864,261</b>	<b>80.22%</b>

\* Loss Ratio = (Direct Losses + Direct Defense and Cost Containment Expenses Incurred) / Direct Premiums Earned.

(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 has created a forum for discussion and research of potential effects of ACA on medical professional liability insurance. The Affordable Care Act Medical Professional Liability (C) Working Group was created to study feasible outcomes of the law. Information regarding this group can be found on the NAIC website.<sup>2</sup>

The NAIC publishes market share reports by line of business for property/casualty insurance. The *2012 Medical Professional Liability, Other Liability, and Products Liability Market*

*Share Report for Property/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 countrywide, as well as 99% of the marketplace in each jurisdiction. The *2012 Medical Professional Liability, Other Liability, and Products Liability Market Share Report for Property/Casualty Groups and Companies* direct written premium is slightly lower than that contained in the information on the CIPR website, as the report includes negative premium from companies who have withdrawn from the medical professional liability line of business.

<sup>2</sup> [www.naic.org/committees\\_c\\_aca\\_med\\_pro\\_liability.htm](http://www.naic.org/committees_c_aca_med_pro_liability.htm).



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