Mandatory Prelitigation Screening Panels
Maine and New Hampshire Data

Recorded by Medical Mutual Insurance Company of Maine, Inc.

Medical Mutual Insurance Company of Maine, Inc. ("MMIC"), is a medical malpractice insurer with a substantial market share in Maine and New Hampshire.

1. Time required to resolve claims under Panel and non-Panel systems:

• 722: average days required to resolve non-meritorious claims in era before Panels

• 492: average days required to resolve non-meritorious claims after Panels

• 230: reduction in average days required to resolve non-meritorious claims once Panels were introduced

• 500: reduction in average days required to resolve meritorious claims once Panels were introduced

(*Source: Maine Bureau of Insurance study, 1997; "meritorious" = settlement or award to claimant*)

2. Low-damages claims settled (2000-2004):

• 40% of MMIC claims settled in New Hampshire for less than $100,000

• 49% of MMIC claims settled in Maine for less than $100,000

(*Source: Medical Mutual Insurance Company data from the 5-year period 1/1/2000 – 12/31/2004; NH was a non-panel state during this period*)

3. Number of claims settled before Panel Hearings:

• Claims recorded by MMIC are either *filed actions* or *informal requests for damages*

• 75% of *filed actions* against MMIC insureds were either settled or voluntarily dismissed without a Panel hearing

• 84% of total claims (*filed actions* and *informal requests for damages*) were settled or voluntarily dismissed without a Panel hearing

• 80% of MMIC's total *settled* claims were settled before a Panel hearing

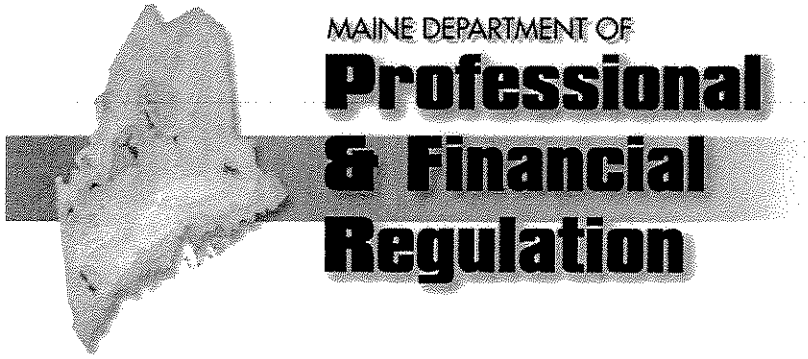
• $19.7 million was paid in settlements by MMIC to *informal request* claimants and their attorneys without the filing of a notice of claim from 2000-2007

(*Source: Medical Mutual Insurance Company data from the 11-year period 01/01/1994 – 12/31/2004*)

4. Percentage of filed claims that reached trial, Panel (Maine) vs. non-Panel systems (NH)

	Maine	New Hampshire
Number of Files (Trials)	28	20
Number of Claims	999	275
Proportion of Filed Claims That Reach Trial	2.8%	7.3%

(*Medical Mutual Insurance Company Closed Claims: Trial Data from ME and NH, 01/01/1995 – 12/31/2004 (period prior to NH adoption of panel system*)



A Report to the Joint Standing Committee on Insurance and Financial Services of the 122nd Maine Legislature

Medical Malpractice Insurance in Maine

Submitted by the Bureau of Insurance,
Department of Professional and Financial Regulation
March 30, 2005

Executive Summary

In 2003, the Legislature enacted the Dirigo Health Act (P.L. 2003, c. 469), which required the Superintendent of Insurance to submit to the Legislature a report regarding medical malpractice lawsuits in Maine, the cost and availability of medical malpractice insurance, and the impact on the cost of such insurance of a cap on non-economic damages of $250,000. Significant findings of this report include:

- Maine's current premium rates are generally less than half of the national average and among the 10 lowest states in the nation.
- Maine's medical malpractice insurance market is extremely concentrated, suggesting a lack of competition and a potential lack of coverage availability for healthcare providers, however stakeholders interviewed for the report did not view this market concentration as a major problem.
- Neither Maine's level of annual rate changes nor the estimated severity trends of Medical Mutual Insurance Company of Maine (MMIC) in the last several years exhibit the pattern of dramatic inflation shown in other states.
- Nationwide loss and defense expense to premium ratios increased from 80% in the early 1990s to over 120% in 2001- 2002. Maine's five year average of 90% of premium is significantly lower than the national average of 113%.
- A $250,000 cap on non-economic damages could reduce expected loss and allocated loss adjustment expense by 15%-22%. A non-economic damage cap of $350,000 could produce reductions of 12%-17%, while a $500,000 cap has estimated reductions of 8%-12%.
- Effectively implemented "I'm sorry" programs are estimated to generate a 3.5% - 5.9% savings in total claim costs and potentially an increase in actual indemnity payments received by patients after attorney fees.

IV. Claims Study

A. Claims Disposition

The Maine Claims Database demonstrates the following with regards to claims disposition for report years 1994 – 2004:

- *Claims with no prelitigation review or lawsuit* – In the 10 years, 869 claims were disposed of without a prelitigation review or lawsuit. While a variety of reasons exist for this disposition, three significant categories arise: dismissal (32%), settlement (29%), and withdrawal/abandonment (30%).
- *Claims with a prelitigation review but no lawsuit* – The 36 claims which fell into this category exhibited a similar distribution of reasons for disposition. However, these claims show a lower propensity to be withdrawn or abandoned (only 22%).
- *Claims with a lawsuit but no judgment or verdict* – 903 claims fell into this category; 37% were dismissed, 26% were settled, and 13% were withdrawn or abandoned.
- *Claims with a lawsuit and trial* – Of the 46 claims that went to trial, almost three-quarters of the verdicts were in favor of defendants.

B. Costs

A review of the costs associated with the 1994-2004 claims in the Maine Claims Database shows the following:

- *Average settlements* – The 10-year average settlement with no filed lawsuit or prelitigation review was $233,600; in 2004, this average settlement was $53,000. The 10-year average settlement with a prelitigation review but no filed lawsuit was $192,500; in 2004, this average settlement was $135,000. The 10-year average settlement with a filed lawsuit settled before the verdict was $297,858; in 2004, this average settlement was $87,500. The 10-year average award for claims with a verdict for the plaintiff was $423,035 (there were no 2004 claims in this category). Claims that settled without a lawsuit or prelitigation review have settled at higher amounts than those claims that were

settled without a lawsuit and with a prelitigation review. Claims where a lawsuit was filed have higher average settlement values.

- *Average defense costs* – The 10-year average Defense and Cost Containment (DACC) expense for claims with a settlement but no filed lawsuit or prelitigation review was $25,083; in 2004, the average cost was $6,097. The 10-year average DACC for claims with a prelitigation review and settlement but no filed lawsuit was $31,497; in 2004, the average cost was $75,000. The 10-year average DACC for claims with a filed lawsuit settled before the verdict was $35,435; in 2004, the average cost was $12,063. The 10-year average DACC for lawsuits in which the verdict favored the plaintiff was $88,963 (there were no 2004 claims in this category). The 10-year average DACC for lawsuits in which the verdict favored the defendant was $67,628 (there were no 2004 claims in this category).

C. Claim Settlement Costs

The 1994-2004 claims reviewed in the Maine Claims Database exhibit the following with regards to claim settlement costs:

- *Size of loss* – The total 10-year loss was approximately $164.6 million. Over 81% was loss; Defense and Cost Containment (DACC) expense accounted for 18%. The split between loss and DACC changes significantly as the size of loss increases; it is not unusual for the percentage of DACC to decrease as the size of a liability loss increases.
- *Loss distribution* -- Of the 2,792 closed cases, 1,152 (over 41%) had claims of $1-$5,000; an additional 575 (21%) had no value claims. Only 38 cases (less than 1.5%) involved claims of $1 million or more. There is no shift to larger claims in recent years.
- *Larger claims by medical specialty* -- Claims in excess of $500,000 account for 3.26% of the total number of closed claims in the 10-year period. Of these, hospital claims account for nearly 17%; corporate liability accounts for another 8%. Of the remaining 75%, OB/GYN claims account for approximately 14% and internal medicine claims account for about 8.5%. Of

the 13 larger Ob/Gyn claims, five of the claims alleged a failure or delay in diagnosis (including three associated with the diagnosis of breast cancer), four alleged mismanagement of the labor and delivery, and the remaining claims had unique descriptions.

D. Additional Claims Study Observations

Other relevant facts gleaned from the 1994-2004 data in the Maine Claims Database include:

- *Claim frequencies* -- Reported claim frequencies per 100 FTE health care providers have leveled off and may be decreasing. However, given reporting and settlement delays, it is too early to conclude whether the decrease will be borne out.
- *Severity* -- Claim severities exhibit a steady and significant upward trend over the past 10 years.
- *Attorney involvement* -- The 10-year average attorney involvement is about 74% of claims. The percentage of attorney involvement is decreasing slightly.
- *Closure* -- The average claim was closed approximately 15 months after it was reported and almost four years after it occurred. This is consistent with other states.

V. Non-Economic Damage Caps

Of 22 actuarial studies [See Appendix 2] that specifically address the impact of non-economic damage caps, the majority reach the same conclusion: caps on non-economic damages will reduce the amount of dollars spent to settle insurance losses. The amount of the reduction varies due to differences in the structure of the cap, the state under review and the assumption of how much of current total losses are attributable to non-economic damages. Studies which compared states with caps to states without caps on key statistics such as cumulative rate increases, premium levels, combined loss ratios, and per physician average payments concluded that caps are effective in reducing costs.

STATE COURT MEDICAL MALPRACTICE CASE DATA

YORK	NOC's FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	10	3	7	0	3	30.00%	0.00%
2003	9	3	6	0	1	11.11%	0.00%
2004	7	2	4	1	2	28.57%	14.29%
2005	9	7	0	2	0	0.00%	22.22%
2006	11	5	3	3	0	0.00%	27.27%
2007	9	1	1	7	0	0.00%	77.78%

CUMBERLAND	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	33	13	19	1	7	21.21%	3.03%
2003	40	15	25	0	11	27.50%	0.00%
2004	28	9	16	3	5	17.86%	10.71%
2005	32	14	10	8	6	18.75%	25.00%
2006	22	10	7	5	4	18.18%	22.73%
2007	24	1	9	14	1	4.17%	58.33%

ANDROSCOGGIN	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	11	0	11	0	2	18.18%	0.00%
2003	22	7	15	0	7	31.82%	0.00%
2004	11	1	10	0	2	18.18%	0.00%
2005	11	6	4	1	4	36.36%	9.09%
2006	18	6	8	4	2	11.11%	22.22%
2007	10	0	1	9	0	0.00%	90.00%

FRANKLIN	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	2	1	1	0	2	100.00%	0.00%
2003	1	0	1	0	0	0.00%	0.00%
2004	2	0	2	0	0	0.00%	0.00%
2005	7	5	2	0	2	28.57%	0.00%
2006	3	2	1	0	2	66.67%	0.00%
2007	1	0	1	0	0	0.00%	0.00%

OXFORD	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	2	0	2	0	0	0.00%	0.00%
2003	2	0	2	0	1	50.00%	0.00%
2004	1	1	0	0	0	0.00%	0.00%
2005	1	1	0	0	0	0.00%	0.00%
2006	1	0	1	0	0	0.00%	0.00%
2007	0	0	0	0	0	0.00%	0.00%

KENNEBEC	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	11	2	9	0	3	27.27%	0.00%
2003	19	6	13	0	5	26.32%	0.00%
2004	6	4	2	0	2	33.33%	0.00%
2005	14	10	4	0	3	21.43%	0.00%
2006	7	2	2	3	0	0.00%	42.86%
2007	14	0	4	10	0	0.00%	71.43%

SOMERSET	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	2	0	2	0	0	0.00%	0.00%
2003	4	1	3	0	1	25.00%	0.00%
2004	4	0	4	0	0	0.00%	0.00%
2005	2	0	1	1	0	0.00%	50.00%
2006	2	0	1	1	0	0.00%	50.00%
2007	4	0	2	2	0	0.00%	50.00%

PENOBSCOT	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	26	10	16	0	5	19.23%	0.00%
2003	15	1	14	0	0	0.00%	0.00%
2004	9	3	6	0	3	33.33%	0.00%
2005	12	9	3	0	4	33.33%	0.00%
2006	12	4	8	0	3	25.00%	0.00%
2007	14	0	6	8	1	7.14%	57.14%

PISCATAQUIS	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	1	1	0	0	0	0.00%	0.00%
2003	0	0	0	0	0	0.00%	0.00%
2004	0	0	0	0	0	0.00%	0.00%
2005	0	0	0	0	0	0.00%	0.00%
2006	1	0	0	1	0	0.00%	100.00%
2007	1	0	0	1	0	0.00%	100.00%

KNOX	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	3	0	3	0	1	33.33%	0.00%
2003	2	0	2	0	1	50.00%	0.00%
2004	0	0	0	0	0	0.00%	0.00%
2005	2	2	0	0	0	0.00%	0.00%
2006	3	0	2	1	0	0.00%	33.33%
2007	3	1	0	2	0	0.00%	66.67%

LINCOLN	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	3	1	2	0	1	33.33%	0.00%
2003	3	2	1	0	0	0.00%	0.00%
2004	7	2	4	1	0	0.00%	14.29%
2005	2	2	0	0	1	50.00%	0.00%
2006	0	0	0	0	0	0.00%	0.00%
2007	0	0	0	0	0	0.00%	0.00%

SAGADAHOC	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	4	2	2	0	0	0.00%	0.00%
2003	1	0	1	0	0	0.00%	0.00%
2004	1	0	1	0	0	0.00%	0.00%
2005	2	0	2	0	0	0.00%	0.00%
2006	1	0	0	1	0	0.00%	100.00%
2007	1	0	1	0	0	0.00%	0.00%

WALDO	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	3	3	0	0	1	33.33%	33.33%
2003	4	0	4	0	0	0.00%	0.00%
2004	5	0	5	0	0	0.00%	0.00%
2005	2	1	1	0	0	0.00%	0.00%
2006	1	1	0	0	1	100.00%	0.00%
2007	1	0	0	1	0	0.00%	100.00%

HANCOCK	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	1	0	1	0	0	0.00%	0.00%
2003	7	4	3	0	2	28.57%	0.00%
2004	7	4	3	0	3	42.86%	0.00%
2005	5	5	0	0	1	20.00%	0.00%
2006	5	3	2	0	2	40.00%	0.00%
2007	3	0	1	2	0	0.00%	66.67%

WASHINGTON	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	0	0	0	0	0	0.00%	0.00%
2003	0	0	0	0	0	0.00%	0.00%
2004	2	1	1	0	0	0.00%	0.00%
2005	2	1	1	0	0	0.00%	0.00%
2006	3	1	2	0	0	0.00%	0.00%
2007	2	0	1	1	0	0.00%	50.00%

AROOSTOOK	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	4	3	1	0	0	0.00%	0.00%
2003	8	3	5	0	0	0.00%	0.00%
2004	4	2	2	0	2	50.00%	0.00%
2005	6	2	4	0	4	66.67%	0.00%
2006	10	3	4	3	3	30.00%	30.00%
2007	9	1	1	7	1	11.11%	77.78%

STATEWIDE	FILED	PANEL FINDING	OTHER CLOSE	PENDING	COMPLAINT FILED	% OF NOC's RESULTING IN COMPLAINTS	% OF NOC's PENDING
2002	113	36	76	1	24	21.24%	0.88%
2003	137	42	95	0	29	21.17%	0.00%
2004	94	29	60	5	19	20.21%	5.32%
2005	109	56	12	41	15	13.76%	37.61%
2006	100	18	13	69	4	4.00%	69.00%
2007	96	4	28	64	3	3.13%	66.67%