# SJR 35: Study of Health Care
## *Medical Malpractice Insurance Data for Montana*

Prepared for the Children, Families, Health, and Human Services Interim Committee
April 2010

*Background*
Since the mid-1990s, the Montana Legislature has adopted a number of changes to the state's general liability and medical malpractice laws. Many of the changes reflect proposals supported by tort reform advocates as a way to reduce the costs of medical malpractice insurance and, ultimately, reduce overall health care costs.

Questions often arise about whether the changes in Montana's liability laws have improved the medical malpractice outlook for health care practitioners. That question involves many factors, some of which are hard to quantify. For example, only a physician could say whether Montana's liability laws and legal climate have changed the way he or she practices medicine.

However, in an attempt to gauge at least some of the possible effects of the changes on Montana's malpractice climate, this briefing paper provides historical information on:

- the premiums charged by the two medical malpractice insurers that provide coverage to the majority of Montana physicians; and

- the premiums and claims experience of those two companies over the past four years.

*Malpractice Insurance Premiums*
Two medical malpractice insurers provide coverage to more than 1,000 Montana physicians. The Utah Medical Insurance Association wrote policies covering just under 700 doctors in 2009, while The Doctors Co. issued policies covering nearly 400 physicians.

Utah Medical has increased its premiums in 11 of the past 27 years; in six of those years, premiums jumped 25% or more. The company decreased premiums in 1991 and then had no increase in premiums for the next eight years. Some of the biggest increases occurred in the mid-1980s and from 2001 to 2004. Following both of those time periods, the Legislature enacted tort reforms.

The Doctors Co. has increased premiums in 13 of the past 20 years and decreased rates five times. Only one increase topped 10%.

However, the changes in premiums from year to year can't necessarily be correlated to changes in state law. There's usually a significant gap between the time a malpractice claim is filed and the time it's resolved. Thus a legislature could enact tort reforms one year and premiums could still increase the next year, if a company had paid out an unexpectedly large amount in claims.

Malpractice insurance costs also are driven by changes in a company's investment income, in a state's insurance market, and in reinsurance rates.[1] Those factors could play out as follows:

- If a company makes a relatively high rate of return on investments, it may reduce its premiums despite its claims experience;
- An increase in insurers offering coverage in the state may create greater competition and result in lower premiums, while the departure of one or more companies from a market could make it easier for remaining insurers to increase their rates.
- An increase in the costs of the reinsurance policies that insurers buy to protect themselves from greater-than-expected losses could result in an increase in the premiums that they charge their policyholders.

*Premiums, Claims, and Loss Ratios*

The 2005 Legislature enacted 33-23-310, MCA, which requires medical malpractice insurers to report the following information to the state:

- the number of people or facilities its policies covered in the previous calendar year;
- the amount of premiums written and paid;
- the number of medical malpractice claims made against policyholders, including the number of claims that were closed, involved a payment, and that remain open; and
- the number of claims filed in court, including their disposition.

The information reported under this statute provides a window of sorts into malpractice insurance activity in Montana. The figures also show a company's "direct loss ratio" in any given year. This ratio is calculated by dividing the amount of losses incurred in a year by the amount of premiums earned in that year. A loss ratio of 100% or more would mean that the insurer's losses in that year equaled or exceeded the premiums the company earned. Insurers try achieve a lower loss ratio.

However, the figures do not show the amounts of money that companies have set aside in reserves to cover the resolution of claims that are pending.

The table on P. 4 summarizes information provided to the State Auditor's Office for Utah Medical and The Doctors Co.

[1] "Diagnosing the Ailment, Prescribing a Cure: Final Report of the Legislative Council on the SJR 32 Study of Medical Liability Insurance," *Montana Legislative Services Division*, September 2004, P.23-26.

## HISTORICAL PREMIUM CHANGES
## BY MAJOR MEDICAL MALPRACTICE INSURERS OF PHYSICIANS

The table below shows the year-by-year change in premiums for medical malpractice insurance offered through the Utah Medical Insurance Association, which provides coverage to the largest number of Montana physicians.

| Utah Medical | % Change | Doctors Co. | % Change |
|---|---|---|---|
| December 1983 | 0% | 1983 | N/A |
| December 1984 | 0% | 1984 | N/A |
| December 1985 | 38% | 1985 | N/A |
| December 1986 | 58% | 1986 | N/A |
| December 1987 | 52.5% | 1987 | N/A |
| 1988 | | 1988 | N/A |
| January 1989 | 13% | 1999 | N/A |
| January 1990 | 0% | September 1999 | -18.1% |
| January 1991 | -18.3% | January 1991 | -3.2% |
| January 1992 | 0% | April 1992 | -3.4% |
| January 1993 | 0% | 1993 | 0% |
| January 1994 | 0% | 1994 | 0% |
| January 1995 | 0% | February 1995 | 6.6% |
| January 1996 | 0% | 1996 | 0% |
| January 1997 | 0% | November 1997 | 4.8% |
| January 1998 | 0% | March 1998 | 0.6% |
| January 1999 | 0% | July 1999 | 0.3% |
| January 2000 | 9.8% | April 2000 | -0.2% |
| January 2001 | 21.5% | October 2001 | 4.8% |
| January 2002 | 35% | May/June 2002 | 3%/0.2% |
| January 2003 | 25% | January 2003 | 4.8% |
| January 2004 | 25% | January 2004 | 31.8% |
| January 2005 | 5% | January 2005 | 9.7% |
| January 2006 | 0% | January 2006 | 9.3% |
| January 2007 | 12.2% | March 2007 | -0.2% |
| January 2008 | 0% | June 2008 | 6.5% |
| January 2009 | 0% | July 2009 | 4% |
| January 2010 | 0% | | |

## MEDICAL MALPRACTICE INSURER SUMMARY OF EARNINGS, LOSSES, AND CLAIMS FILED

Information in the table below goes back only to 2006, which was the first year medical malpractice insurers were required to report the information to the State Auditor's Office. The requirement resulted from passage of Senate Bill 316 during the 2005 legislative session.

| Company-Year | Premiums Earned | Losses Incurred | Loss Ratio |
|---|---|---|---|
| Utah Medical-2009 | $13,053,198 | $12,691,486 | 97.3% |
| Utah Medical-2008 | $14,055,590 | $3,191,653 | 22.7% |
| Utah Medical-2007 | $15,685,143 | $6,052,190 | 38.6% |
| Utah Medical-2006 | $14,530,208 | $7,792,208 | 53.6% |
| | | | |
| Doctors Co.-2009 | $7,236,890 | ($263,080) | -3.64% |
| Doctors Co.-2008 | $7,653,470 | $1,689,837 | 22.1% |
| Doctors Co.-2007 | $7,754,874 | $3,638,976 | 46.9% |
| Doctors Co.-2006 | $8,241,757 | $6,552,203 | 79.5% |

| | | Claims Against Insureds | | | | | |
|---|---|---|---|---|---|---|---|
| Company-Year | # Insured | Filed | Closed With Direct Loss | Lawsuits Filed | Lawsuits Settled | Suits to Trial | Verdict in Favor of Insured |
| Utah Medical-2009 | 684 | 103 | 11 | 8 | 0 | 0 | 0 |
| Utah Medical-2008 | 750 | 104 | 7 | 4 | 0 | 0 | 0 |
| Utah Medical-2007 | 789 | 91 | 30 | 0 | 11 | 0 | 0 |
| Utah Medical-2006 | 797 | 85 | 30 | 45 | 9 | 2 | 2 |
| | | | | | | | |
| Doctors Co.-2009 | 381 | -- | 8 | 8 | 5 | 3 | 3 |
| Doctors Co.-2008 | -- | -- | 18 | 19 | 12 | 1 | 1 |
| Doctors Co.-2007 | 409 | 109 | 30 | -- | -- | -- | -- |
| Doctors Co.-2006 | 414 | 133 | 10 | 11 | 9 | 0 | 0 |

-- indicates no figure was reported in this category

The Montana Medical Legal Panel Report for 2009 indicates that a typical malpractice claim takes five years from the date of filing until it "matures" or is fully reported because Montana has a three-year statute of limitations on discovery. Cl0425 0106soxa.