



Doctors Malpractice – The New York Environment

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Topics for Today

- o Competitive Environment
- o 2011 Medical Indemnity Fund




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MLMIC: A Big Footprint – in One State

- o 87% of premium in 2010 was physicians
- o 36% market share in NY (greater for physicians)
- o 7% national market share (incl. NJ): nation's largest in 2010
- o Med mal obviously highly fragmented




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Med Mal Heavily Regulated

- o Physician rates promulgated according to obscure political process
- o "Surcharge" statute permits mandating inadequate rates
- o Med mal carriers have a broad RBC exemption
- o "Non-liquidation" law allows carriers with negative surplus to continue actively writing


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Numerous Barriers to Entry

- o Low expense ratio / direct distribution dominates
- o Guaranty Fund coverage to \$1M per occurrence
- o "Free excess" funded by State for admitted carriers
- o "Non-liquidation" provision protects admitted carriers against reserve and pricing risks
- o Direct carriers mostly unrated / low use of reinsurance
- o Along with traditional barriers to new entrants


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Competition Modest, Largely RRG's

- o Limited profit potential makes self-insurance, captives and RRG's most viable competitors
- o Estimated RRG growth rate only 7% annually since 2006
- o \$200M current premium
 - including \$65M in recent start-ups

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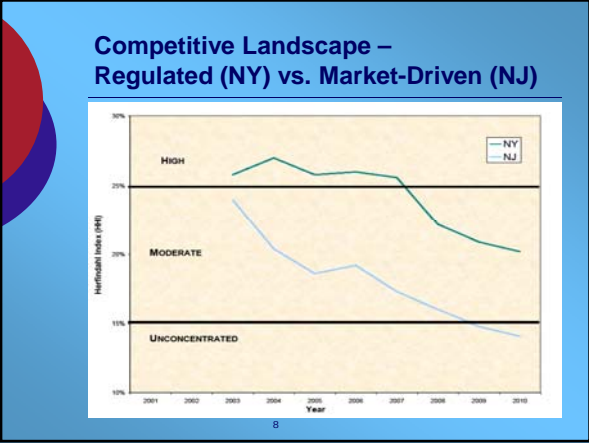


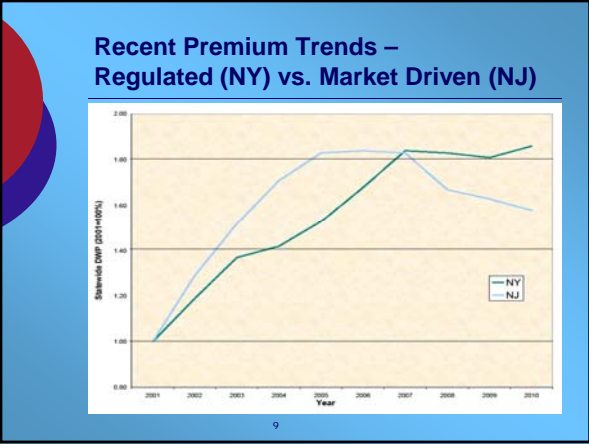
Improved Results Leading to Increased Competition

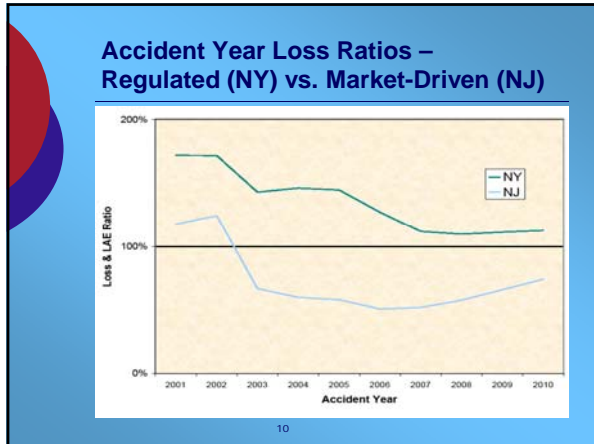
- o Rates "breakeven" – with reserve development, even NY has been profitable
- o RRG's, low-margin carriers, and niche players chipping away at provider business, primary hospitals
- o Larger facilities and higher excess provide additional opportunities



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2011 Medicaid Redesign

Medical Indemnity Fund




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Neurologically Impaired Infant Fund

- o Effective for settlements/verdicts on/after April 1, 2011
- o Covers permanent and substantial neurologic injury during the delivery admission
- o Must be adjudged to be due to malpractice
- o Covers only future actual health care*, as expenses are paid
- o Pays physicians at 100% of reasonable and customary rate
- o All others paid at Medicaid rate


*Also includes rehab, home modifications, assistive technology, vehicle modifications, and the like (but not education expenses)



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How Plaintiff Attorney Gets Paid


- Plaintiff pays as usual for all attorney fees related to the normal part of award (past medical, lost wage, noneconomic)
- Defendant's insurer pays normal attorney fee on the remainder of the award as if a lump sum had been paid
- Requires determination of the "as-if" figure in settlement or verdict
- Subject to defendant's policy limit and NY contingency fee percentage caps



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Characteristics of the Fund


- Is not a no-fault fund
- Does not reduce adjudication / litigiousness
- Does not reduce (may increase) plaintiff attorney fees
- Seeks to be an exclusive remedy, but some vaguely worded provisions may provide opt-out
- Converts a lump sum estimate of future medical ("jackpot") to a guarantee that all medical expenses will be paid when needed (security)
- Funded "pay-as-you-go" by public funds and a hospital 1.6% "baby-tax" (% will certainly climb)
- Makes private insurance (but not Medicaid/Medicare) payer of first resort



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Expected Impacts of the Fund

- Little or no benefit for physician or hospital primary coverage
- A slight benefit possible for physician working layer excess (State funded)
- Potentially a significant benefit for hospital excess layers
 - The reduction of medical expense jackpots will most impact these layers
 - These layers are self-insured, captive-insured, or with commercial carriers
- Can on noneconomic damages would have benefited the physicians but was dropped



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