

# Casualty Actuaries in Reinsurance

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## **Observations on Medical Malpractice**

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This document is incomplete without the accompanying discussion; it is confidential and intended solely for the information and benefit of the immediate recipient hereof.

# Observations on Medical Malpractice

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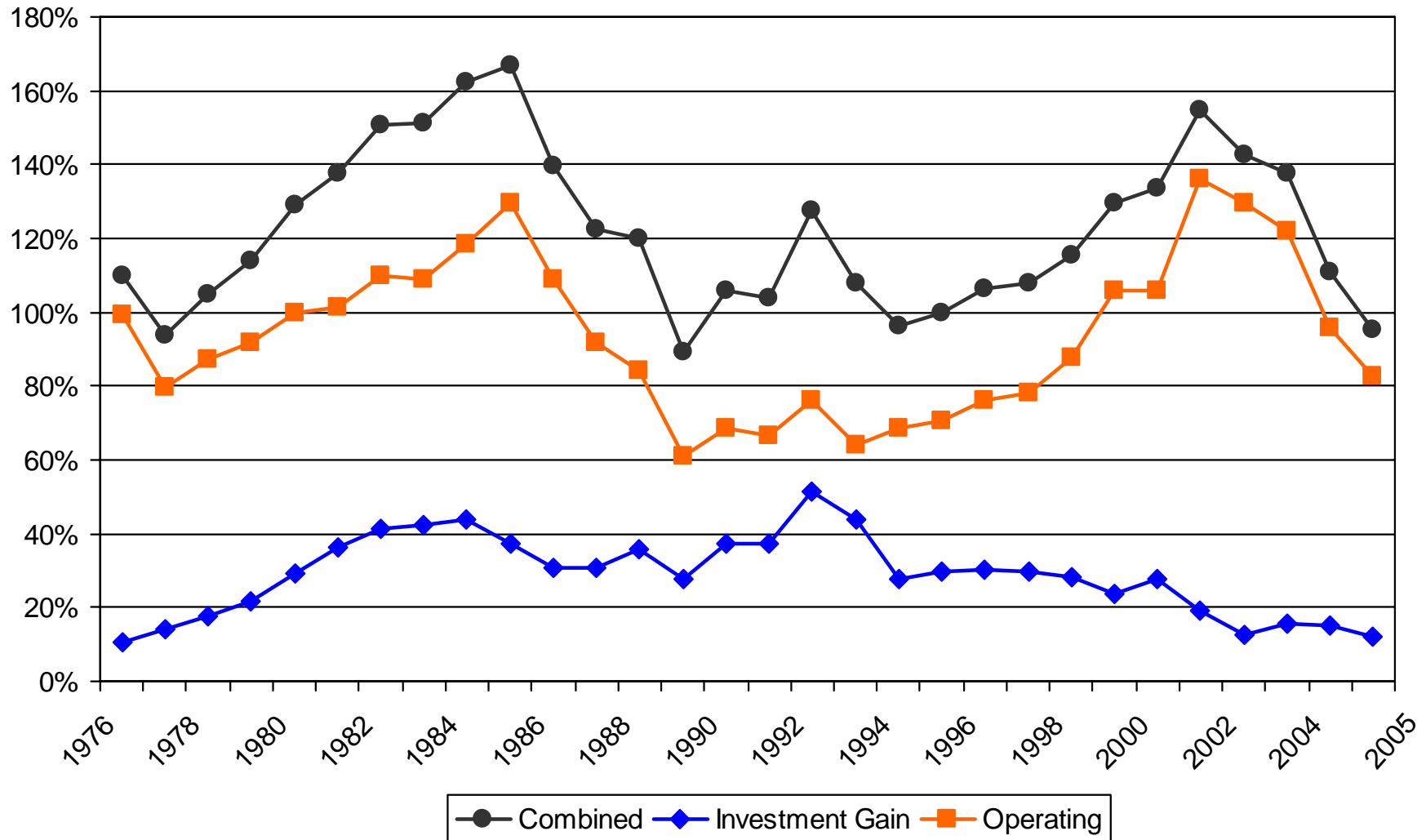
- Financial results
- Tort reform
- Insurance reform

# Observations on Medical Malpractice

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- Financial results impacted by...
  - 1990's
    - modest loss trends
    - favorable reserve development
    - relatively high investment returns
    - expansion
    - slippage in pricing
  - 2000's
    - loss trends pick up
    - unfavorable reserve development
    - investment returns turn
    - rates adjusted
  - 2003 – 2006
    - rates/prices tight
    - tort reform
    - loss trends
    - investment returns stabilize

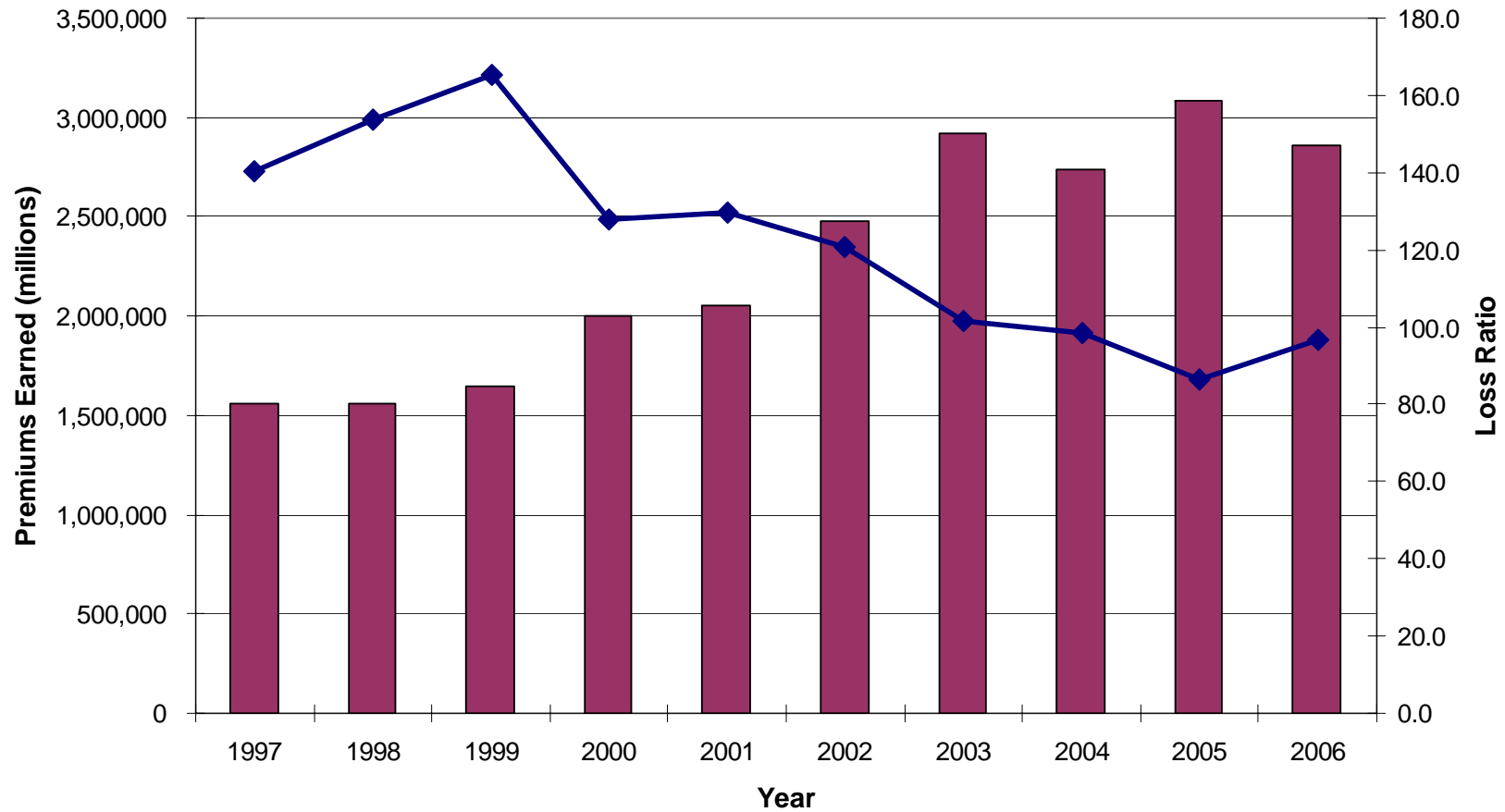
# Observations on Medical Malpractice



Source: A.M. Best's Aggregates and Averages

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence Direct

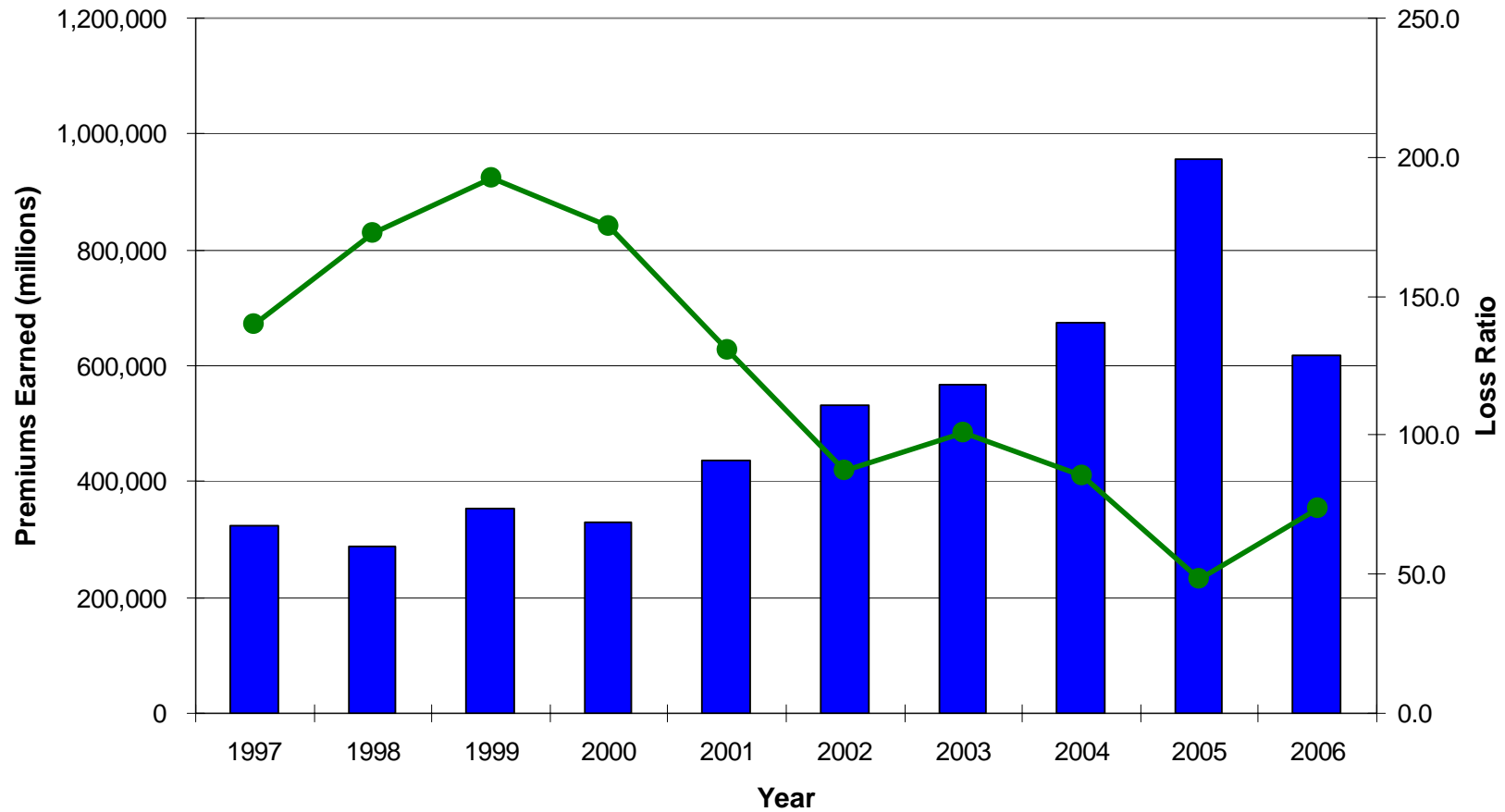


Source: Compilation of Best Data

■ Premiums Earned ◆ Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence Ceded

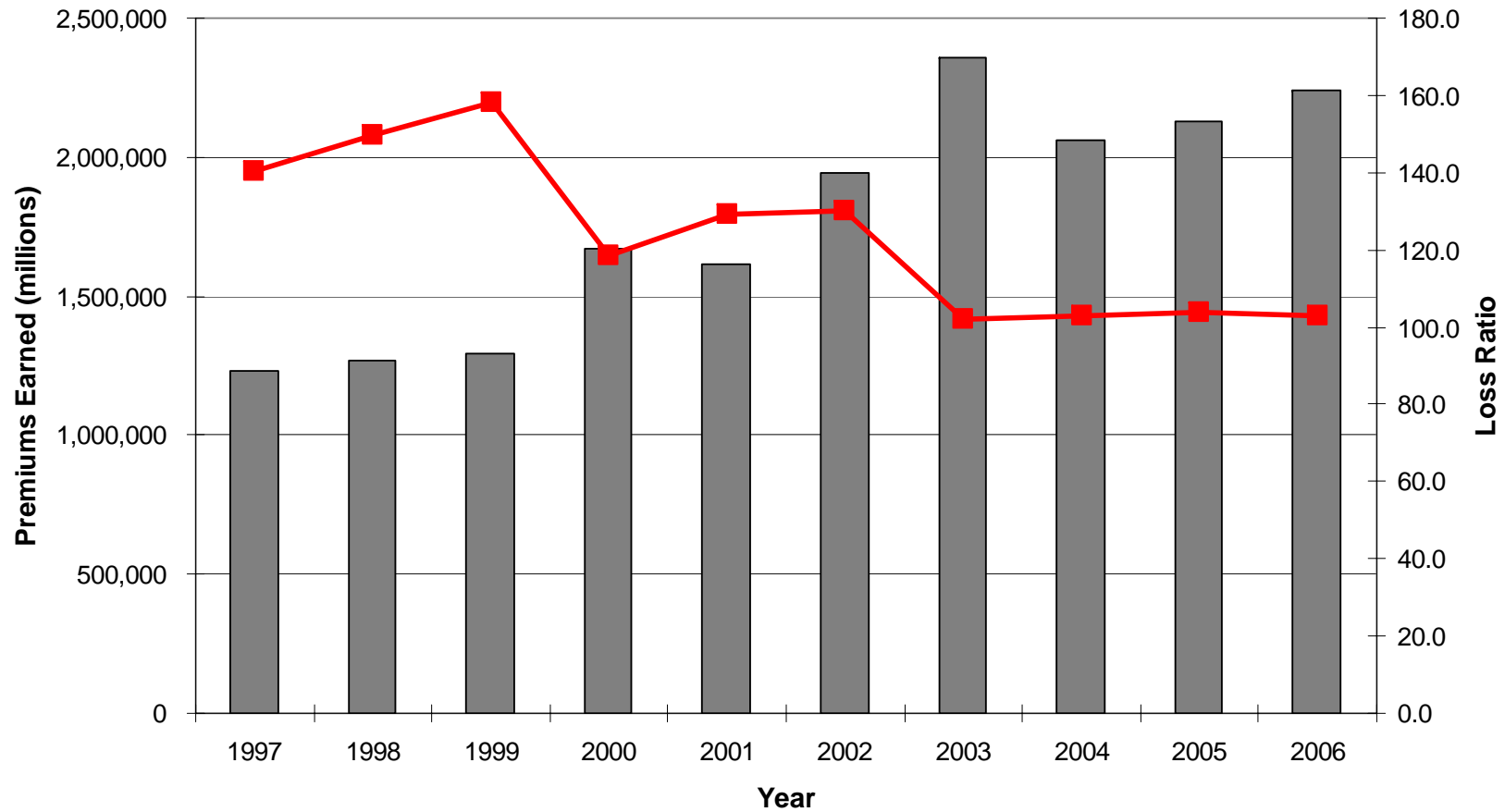


Source: Compilation of Best Data

■ Premiums Earned ● Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence Net

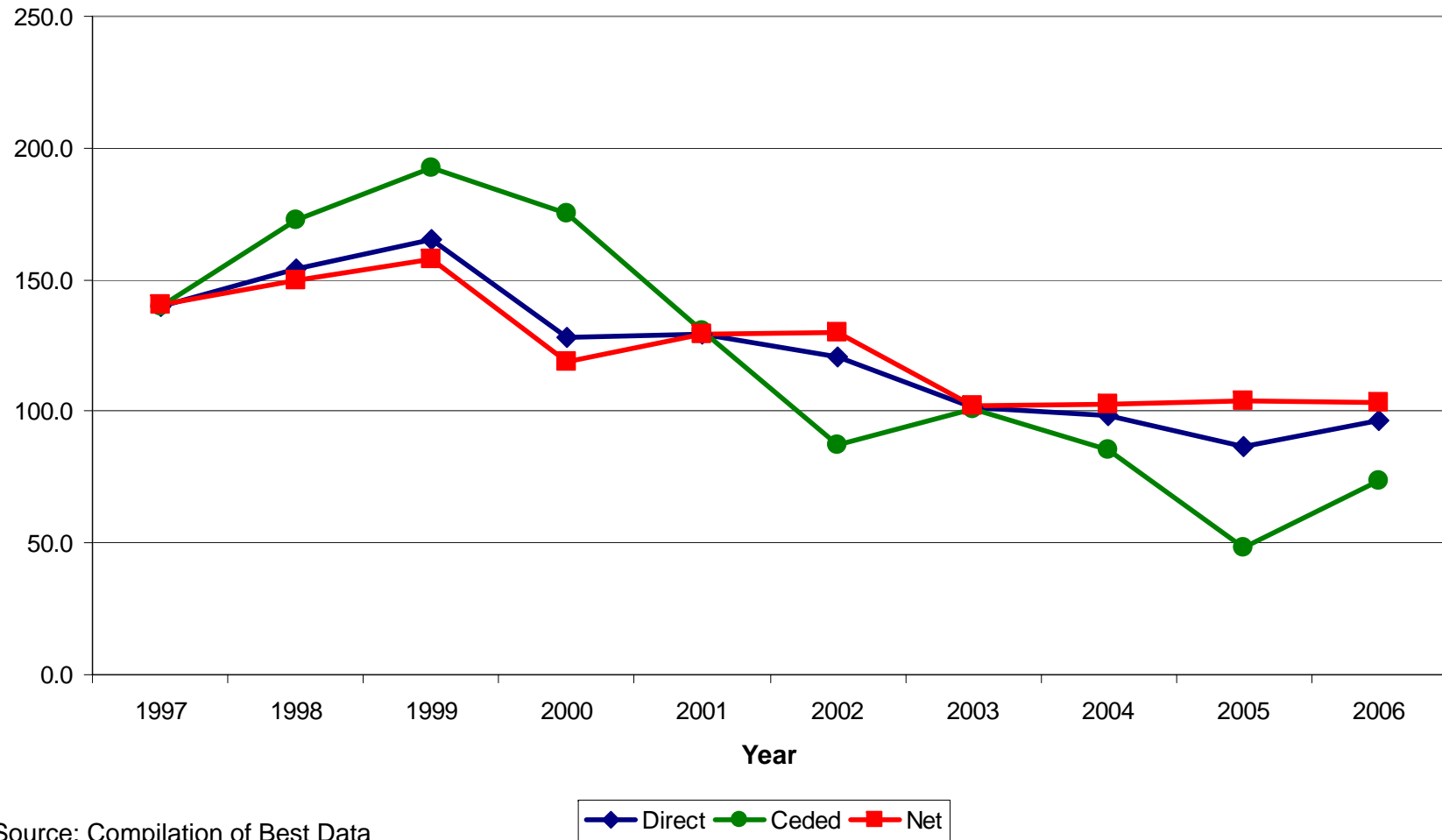


Source: Compilation of Best Data

■ Premiums Earned ■ Loss Ratio

# Observations on Medical Malpractice

Medical Malpractice - Occurrence  
Loss Ratios

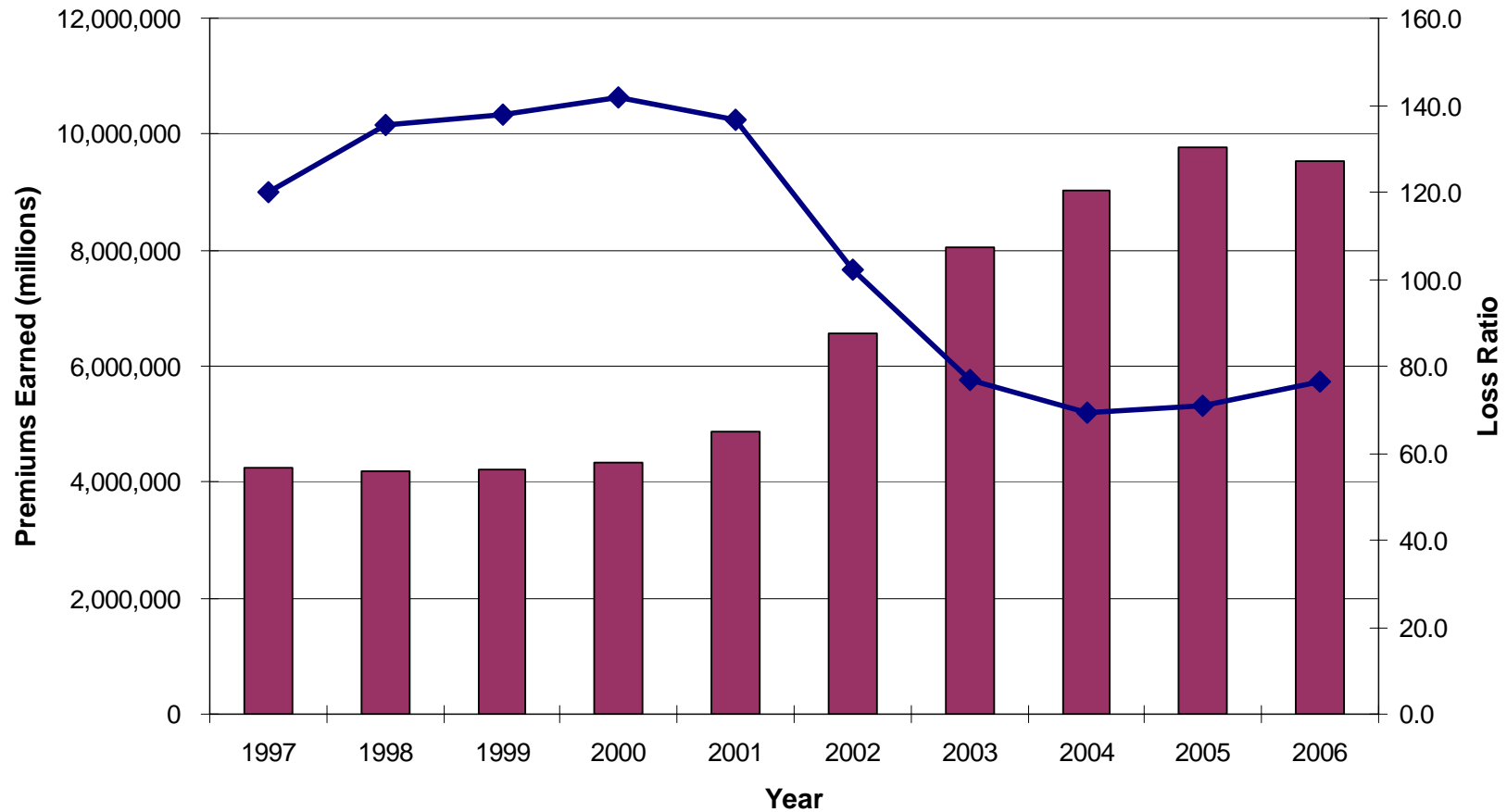


Source: Compilation of Best Data



# Observations on Medical Malpractice

## Medical Malpractice - Claims-Made Direct

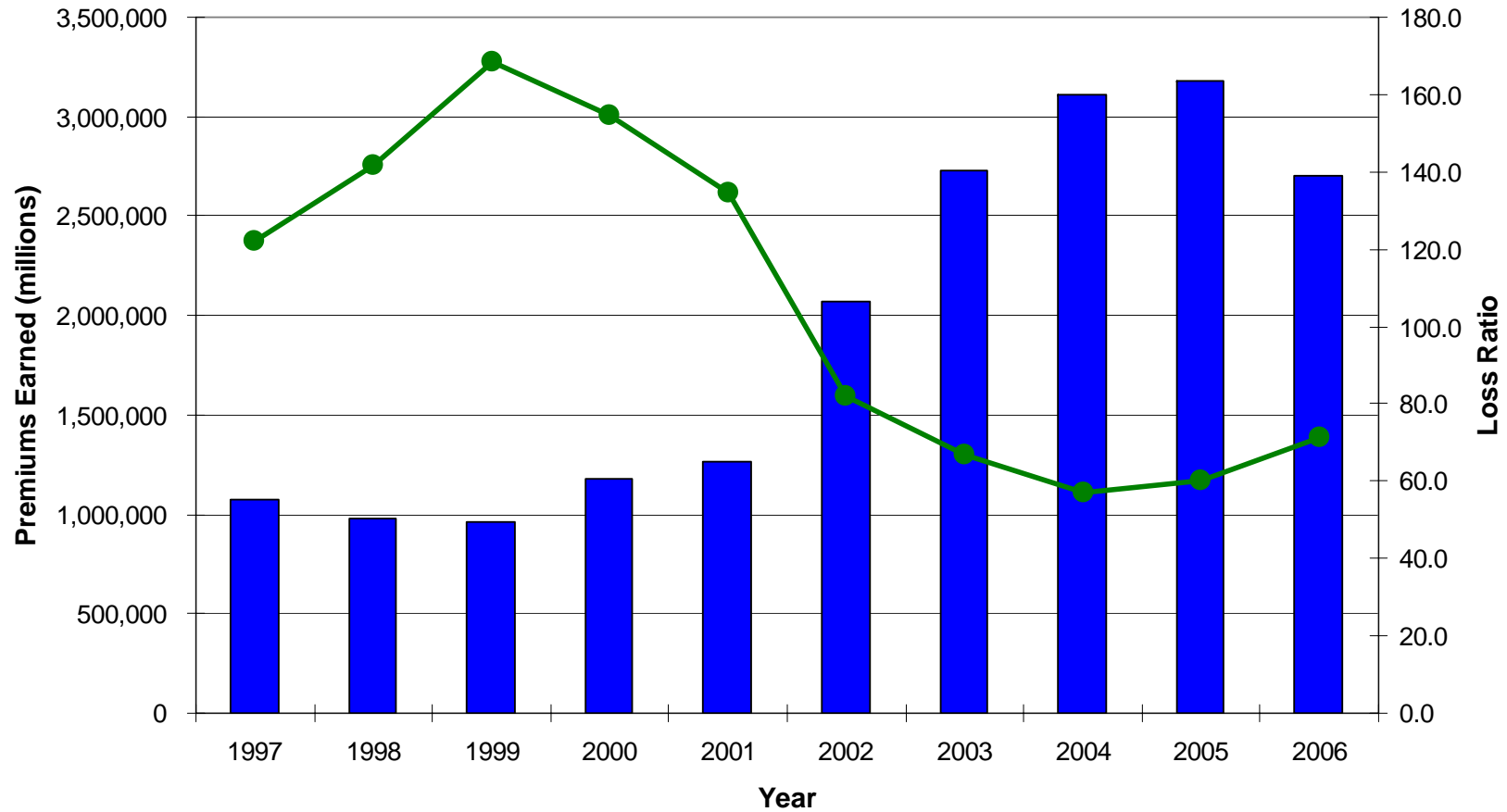


Source: Compilation of Best Data

■ Premiums Earned ◆ Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Claims-Made Ceded

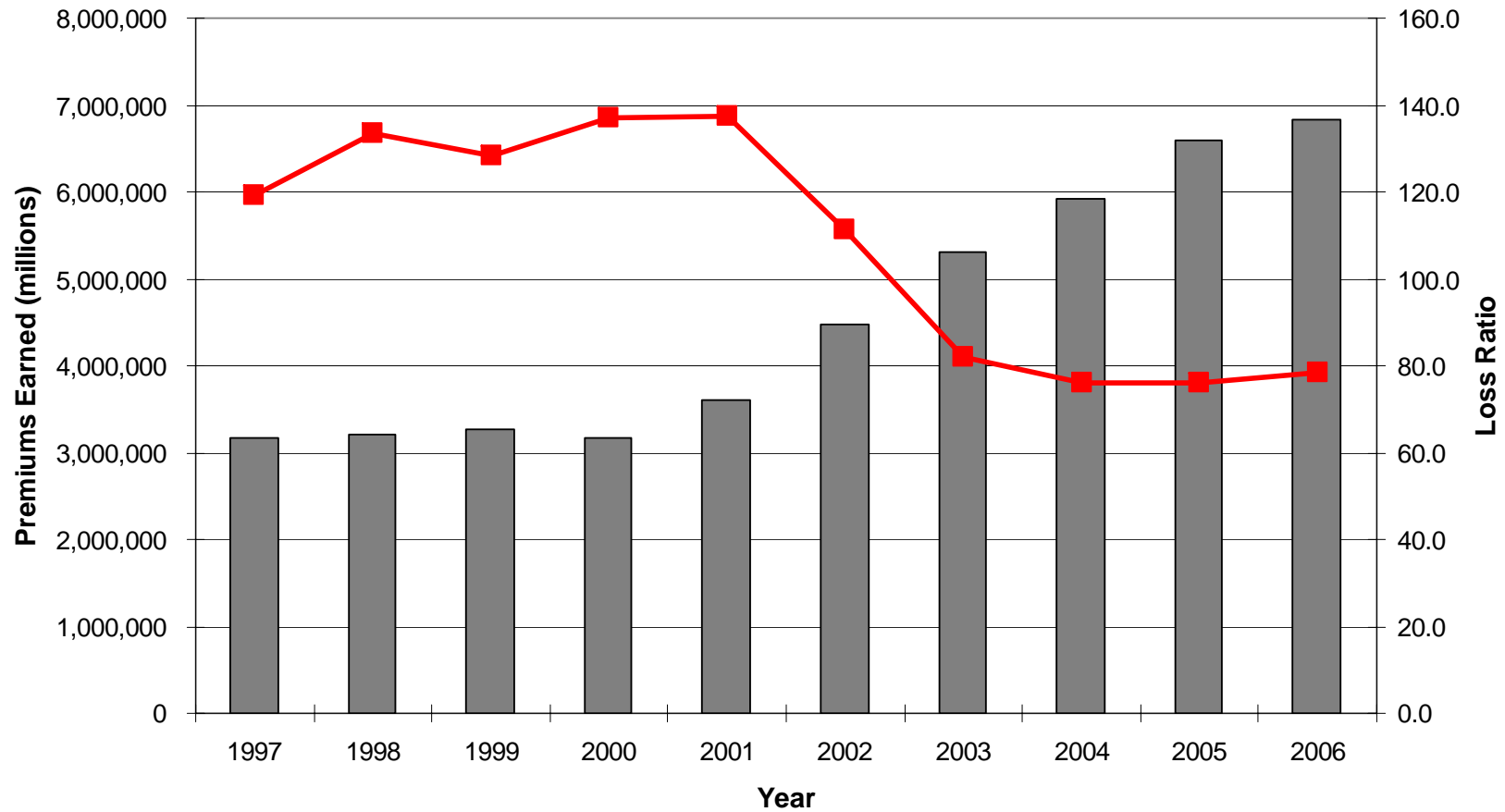


Source: Compilation of Best Data

■ Premiums Earned ● Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Claims-Made Net

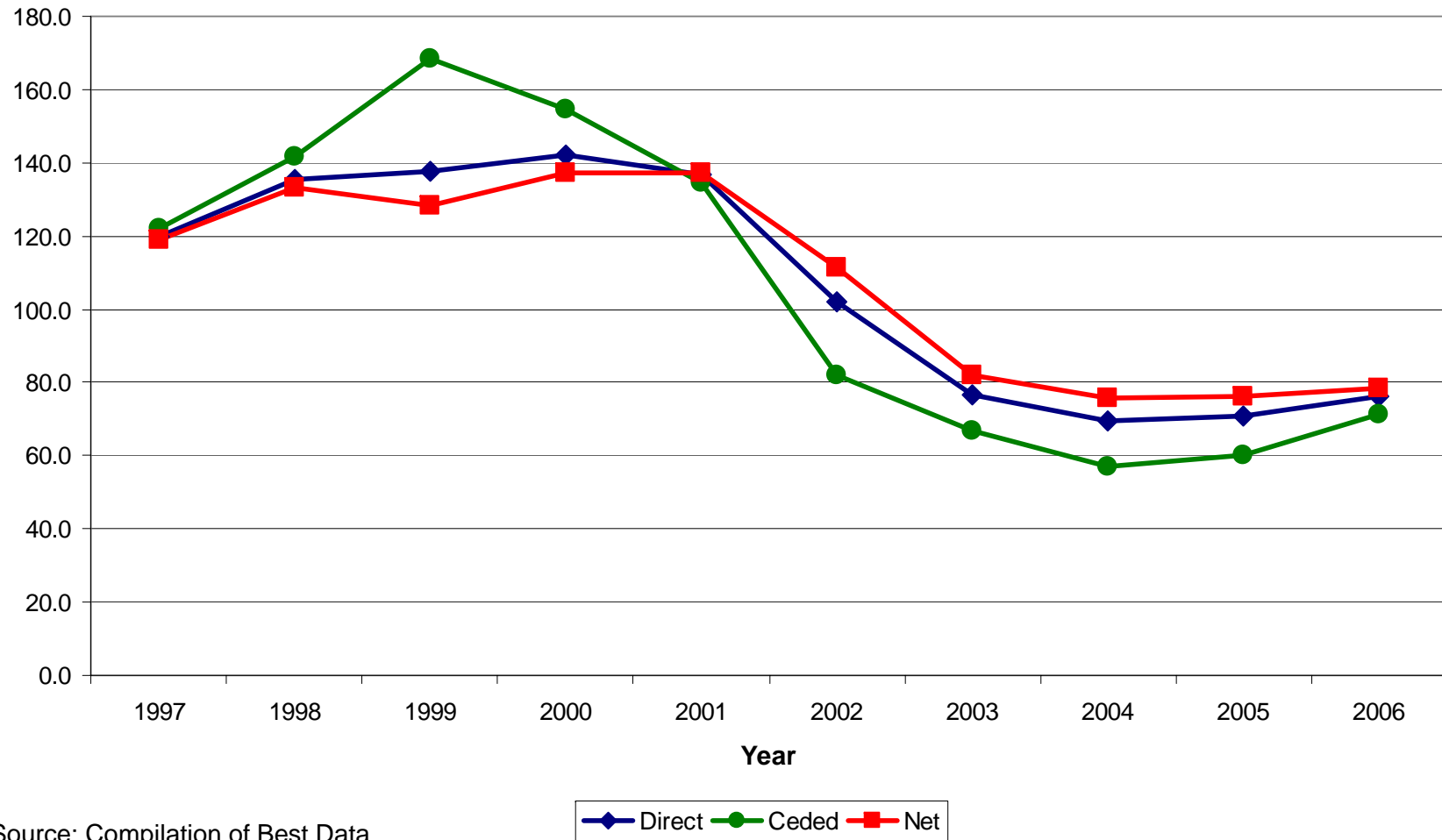


Source: Compilation of Best Data

■ Premiums Earned ■ Loss Ratio

# Observations on Medical Malpractice

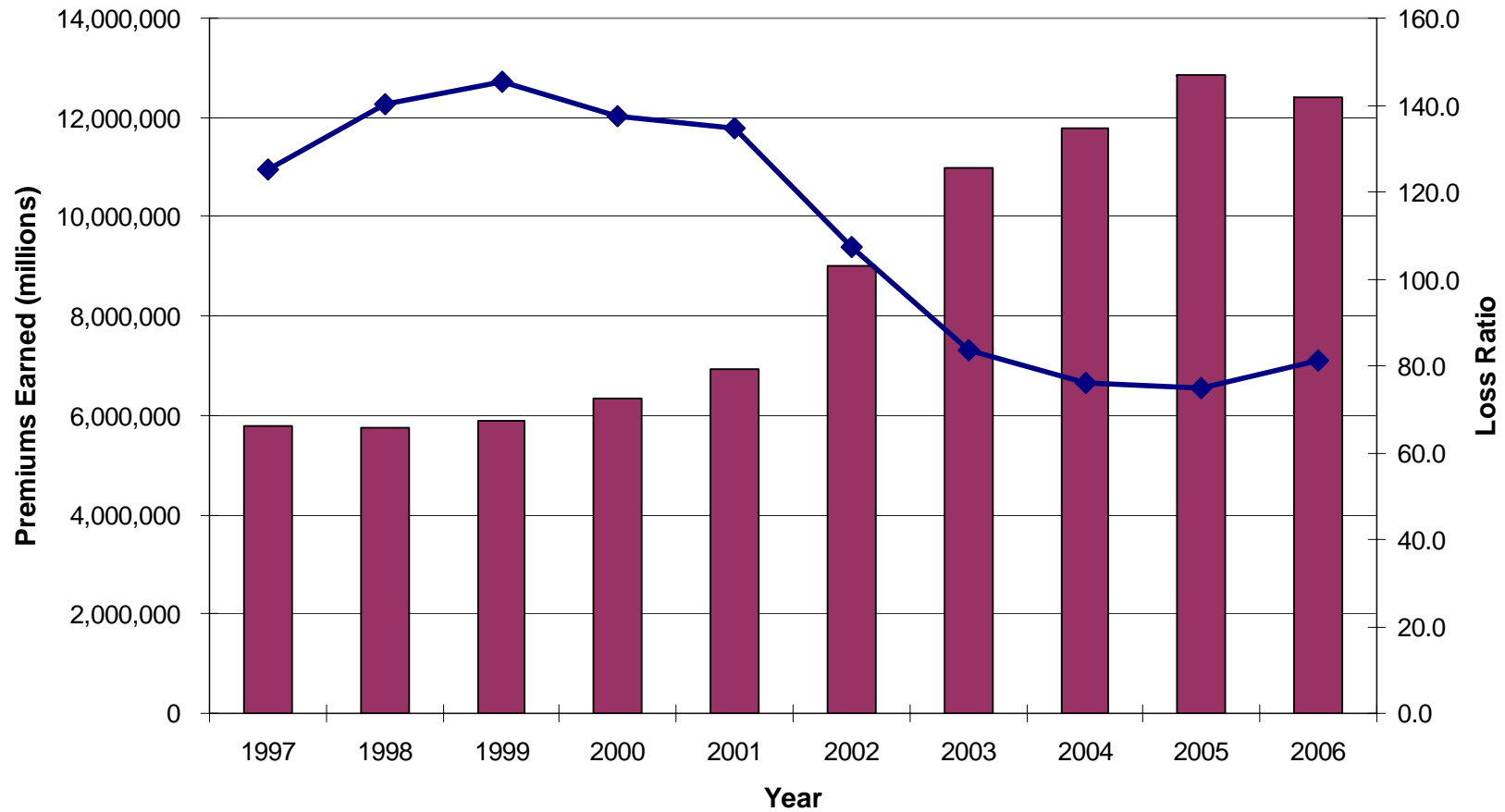
## Medical Malpractice - Claims-Made Loss Ratios



Source: Compilation of Best Data

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence & Claims-Made Direct

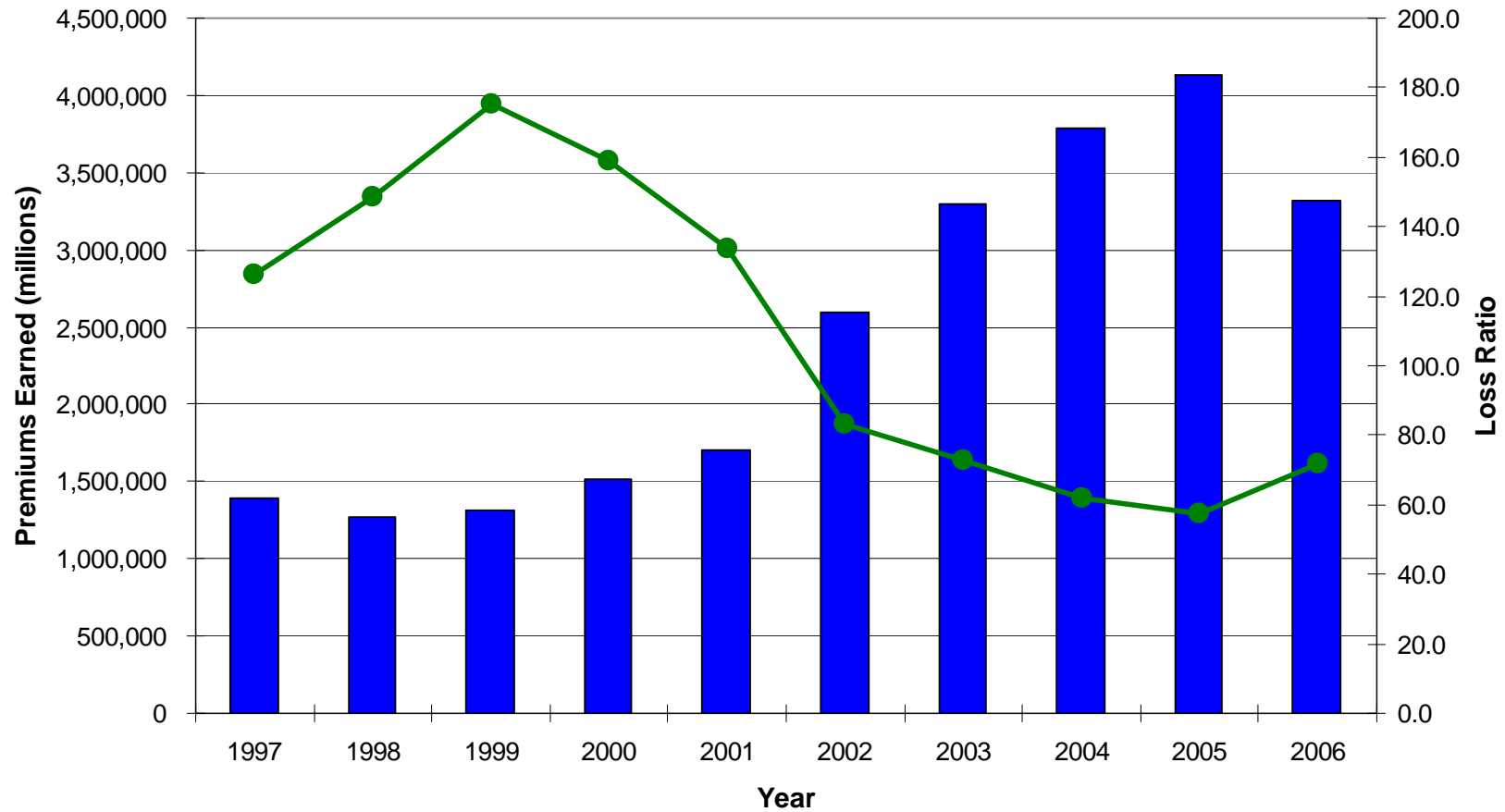


Source: Compilation of Best Data

■ Premiums Earned ◆ Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence & Claims-Made Ceded

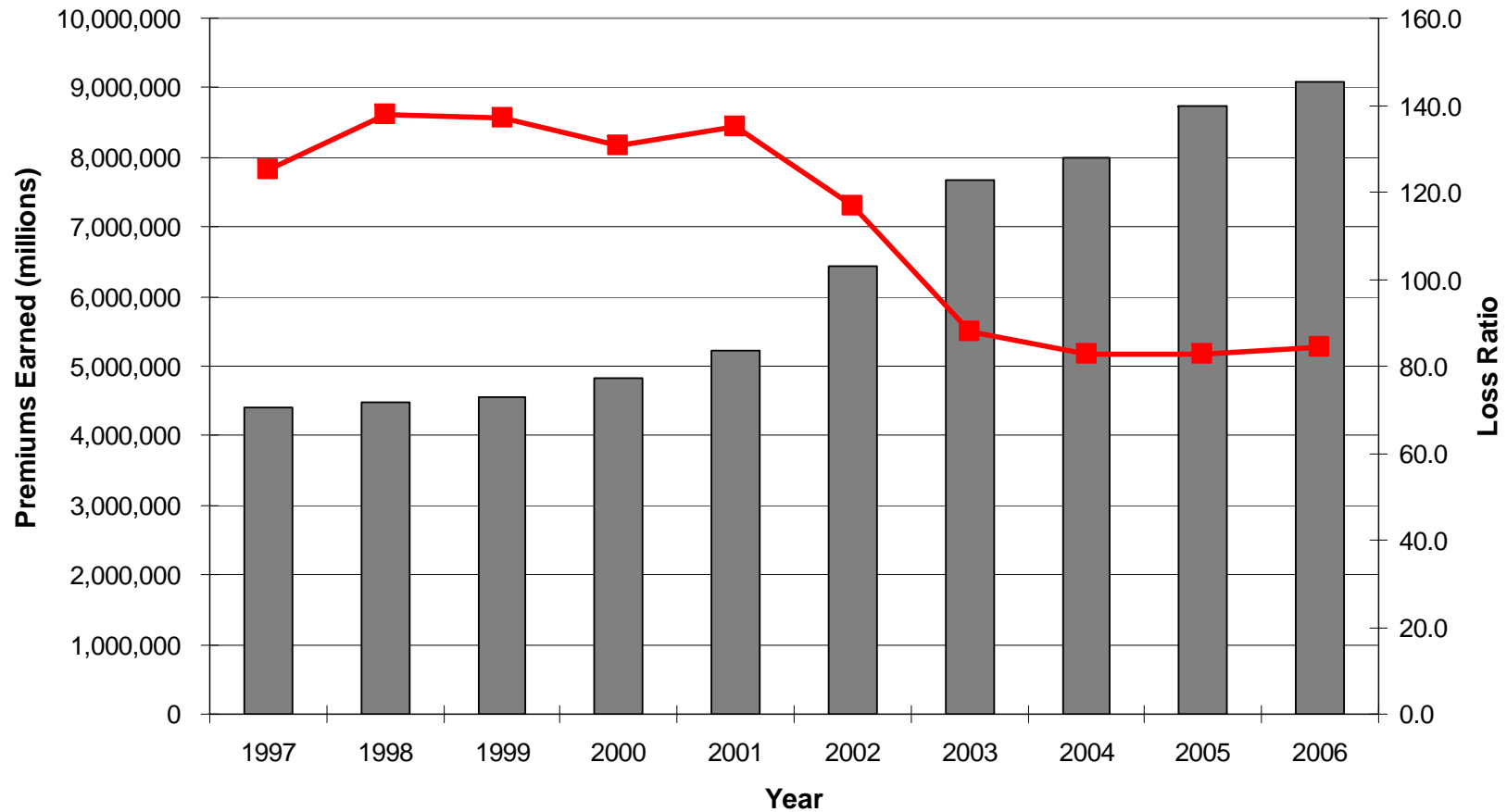


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# Observations on Medical Malpractice

## Medical Malpractice - Occurrence & Claims-Made Net

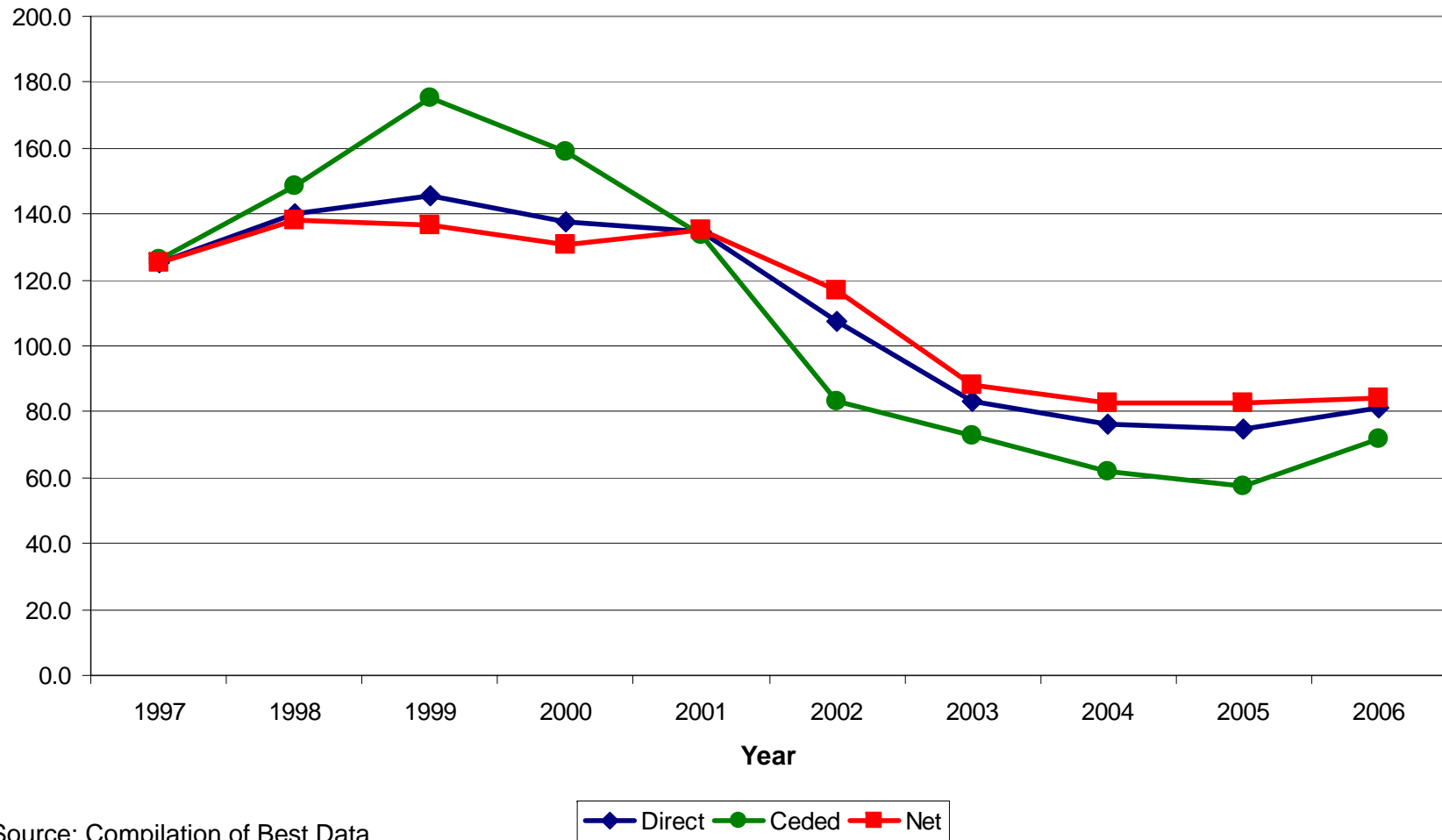


Source: Compilation of Best Data

■ Premiums Earned ■ Loss Ratio

# Observations on Medical Malpractice

## Medical Malpractice - Occurrence & Claims-Made Loss Ratios



Source: Compilation of Best Data



# Observations on Medical Malpractice

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## **Frequently discussed tort reforms**

- Caps on non-economic loss
- Collateral source offsets
- Limitations on joint-and-several liability
- Punitive damage restrictions
- Periodic payments
- Frivolous suit penalties
- Limitations on attorneys' fees
- Immunity statutes

Continued...

# Observations on Medical Malpractice

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## **Frequently discussed tort reforms (cont'd)**

- Changes in pre-judgment interest
- Establishment of pre-trial hearing panels
- Establishment of state-operated funds to handle certain claims
- Changes to the statute of limitation or statute of repose
- Mandatory mediation

# Observations on Medical Malpractice

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## Frequently discussed tort reforms (cont'd)

- MICRA reforms
  - \$250,000 non-economic cap
  - collateral source offset
  - periodic payments
  - 1/3 statute of limitations/repose
  - joint and several liability
  - limitations on attorney fees

# Observations on Medical Malpractice

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- Tort reform
  - Federal
    - several attempts
    - DBA
  - State
    - many discussed
    - several passed
    - likely impacts
      - e.g., TX, PA, FA, IL, OH
      - frequency/severity

Continued...

# Observations on Medical Malpractice

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- Tort reform (cont'd)
  - Issues/risks
    - limited data to evaluate
    - prospective credit?
    - interpreted as expected
    - upheld
    - current loss projections

Continued...

# Observations on Medical Malpractice

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- Tort reform

- Issues/risks (cont'd)

- specifics

- non-economic limit: per defendant or per occurrence
      - collateral source: jury disclosure or after award
      - panels: admissible or not
      - PCF: who defends?

# Observations on Medical Malpractice

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- Regulatory Update
  - California
  - Ohio
  - Rhode Island
  - DC
  - Florida
  - Miscellaneous

# Observations on Medical Malpractice

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- California – Prop 103
  - implemented in 1989
  - all lines; formulaic approach
  - characteristics
    - 3 year experience period
    - direct data (no reinsurance)
    - development – latest 3
    - trend (some flexibility, but generic?)
    - no DD&R provision
    - expenses – efficiency standard
    - other items (e.g., inv yields, FIT) retrospective



# Observations on Medical Malpractice

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- California – Prop 103 – proposed changes
  - med mal = commodity line
  - primarily impacts development/trend
    - 3 year experience period
    - 3 year weighted LDF's
    - trend procedure includes
      - data = premium and “...company specific paid loss, closed claim count and earned exposure data...”
      - “...most recent twelve quarters of rolling calendar year data...”
      - exponential line of best fit based on  $R^2$

# Observations on Medical Malpractice

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## ■ Ohio

- 2003 reforms adopted/commission formed
- findings (2005)
  - maintain reforms
  - rates are “well regulated”; companies should file annually
  - closed claim database
  - drop PCF concept/explore mediation
  - create Patient Safety Center

## Observations on Medical Malpractice

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- Rhode Island – H 5437 (2005 proposal)
  - RI insureds “not disadvantaged”
    - exclude any expense excluded in any other state
    - unless justified by higher RI claims payments:
      - exclude any factor not included in all rate filings in last 12 months
      - no greater % of premium than filed in any state in last 12 months

# Observations on Medical Malpractice

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- Rhode Island (cont'd)
  - Rate standards – establish range for:
    - expected rate of return
    - categories of expenses
    - number of years in determining
      - LDF
      - Trend
      - ILF
    - proper weights for different years experience
    - extent insurers may use judgment in projecting past cost data to future

# Observations on Medical Malpractice

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- Rhode Island (cont'd)
  - Rate standards (cont'd)
    - compare initial vs. current estimate of ultimate losses for latest 8 policy years
    - require memo showing application of all investment income in determining proposed rates
  - Rates by specialty
    - base rate for highest rated specialty  $\leq$  500% of lowest rated specialty
    - may be done on-balance
  - Experience rating plan
    - each insurer shall file plan; revenue neutral
    - surcharges/discounts for indemnity payments in last 10 years

# Observations on Medical Malpractice

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- Rhode Island (cont'd)

- Use of RBC

- total adjusted capital of med mal insurer is excessive if:
      - exceeds CAL
      - hearing finds unnecessarily large
    - excessive capital = no rate increase
      - DOI may order distribution of excessive surplus

## Observations on Medical Malpractice

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- DC – Medical Malpractice Amendment Act of 2006
  - amend RBC Act of 1996 to consider a malpractice insurer's surplus in ratemaking if surplus is unreasonably large
  - enable physicians and consumers to challenge rate increases
  - prior approval for rate changes exceeding 7%

# Observations on Medical Malpractice

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- Florida – proposed SB 1660
  - consumer protection laws apply to insurance
  - more rigorous requirements on experience rating individual physicians and schedule rating generally
  - ALAE/DCC shall be part of insurer's "rate base" only to extent they do not exceed "...the national average for such expenses, as determined by the office, for the prior calendar year..."
  - requires (apparently) a Florida income statement
  - policies effective on/after October 1, 2007, rates shall be 25% less than rates at October 1, 2004



## Observations on Medical Malpractice

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- Florida – proposed SB 1660 (cont'd)
  - insurer, self-insurer or RRG filing a proposed rate change
    - must give notice to public
    - any insured can request a hearing within 30 days (any consumer may participate)
    - public counsel has standing to request hearing
    - med mal rates cannot be based on experience for 2003 and prior

# Observations on Medical Malpractice

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- Miscellaneous

- Other states

- Missouri currently promulgating rules to comply with recent legislation
    - Illinois requires fully documented filings
    - Colorado debates prior approval

# Observations on Medical Malpractice

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- Summary
  - Common ground
    - rules being promulgated apply to
      - med mal only
      - undefined “med mal” insurers
    - some states include self-insurers and RRG’s
  - 2007 +
    - rates/prices
    - tort reforms
    - loss trends
  - Med Mal is on the “radar screen”