

Maryland Insurance Administration's 2005 Report on the Availability and Affordability of Health Care Medical Professional Liability Insurance in Maryland



November, 2005

**Maryland Insurance Administration's 2005 Report on the
Availability and Affordability of Health Care
Medical Professional Liability Insurance**

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I. Preface

The Maryland Insurance Administration (“MIA”) was created as an independent state agency by the Maryland General Assembly in 1993. Among other things, the MIA is charged with:

- Monitoring the solvency of Maryland entities that engage in the business of insurance;
- Encouraging competition within the insurance industry;
- Protecting consumers from fraud, misrepresentation, and unfair trade practices;
- Ensuring that consumers are treated fairly and with respect;
- Combating insurance fraud; and
- Regulating the insurance industry.

Pursuant to SB 836 (2005), Section 4-405 of the Insurance Article requires the Commissioner to report, in accordance with §2-1246 of the State Government Article, the Commissioner's findings as to the impact of Chapter 5 of the Acts of the 2004 Special Session of the General Assembly (HB 2) and Chapter 477 of the Acts of the General Assembly of 1994 on the availability of health care medical professional liability insurance in the State to the Legislative Policy Committee on or before September 1 of each year. This report reflects the information for calendar year 2005.

II. Availability

Title 11 of the Insurance Article sets forth the insurance rating laws for companies engaging in the business of insurance in the State of Maryland. Title 11, subtitle 2, specifically requires prior approval rate-making laws to certain lines of business; including, medical professional liability insurance. The primary purpose of prior approval rate-making is to protect the public welfare by regulating certain insurance rates and prohibiting their implementation and use until such time as the Commissioner finds that the proposed rates are not excessive, inadequate, or unfairly discriminatory. However, the intent of the law is not to prohibit or discourage reasonable competition among carriers offering this type of insurance within the State.

During Calendar Year 2004, there were 124 companies, including surplus lines and risk retention groups, actively providing medical professional liability insurance for healthcare providers in the State of Maryland.¹ Of the 124 companies, five (5) of these carriers are admitted insurers² providing coverage for physicians and surgeons and these five companies comprise approximately 58.25% of the market. *See* Exhibit A and A2.

As shown in Exhibit A and A2, The Medical Mutual Liability Insurance Society of Maryland ("Medical Mutual") continues to be the largest provider of professional liability insurance to physicians and surgeons' in the State and it has a 39.84% share of the market. Medical Mutual was created pursuant to Chapter 544, Section 1, Laws of

¹ Surplus lines carriers and risk retention groups are subject to limited regulation by the State and the MIA does not have prior approval over the rates these carriers charge.

² Admitted insurers are subject to the full regulatory control given to the MIA by the State.

Maryland in 1975 to respond to the limited market availability of such coverage prior to passage of tort reform measures by the General Assembly. Since 1975, Medical Mutual has grown to become the largest provider of this type of coverage for physicians and surgeons practicing in the State.

Despite the growth of Medical Mutual and its large market share, the MIA has continued to encourage competition in this line of business. In September 2005, the MIA received an application from a company which is seeking to enter Maryland's medical professional liability insurance market and which hopes to begin writing non-assessable professional liability policies for physicians in 2006. In light of the possibility of a new company entering the market in Maryland, the MIA has designated 5% of the Maryland Health Care Provider Rate Stabilization Fund to be set aside for use by this potential new carrier in accordance with Section 19-803(d)(1).

III. Affordability

As a result of rising premium costs for medical professional liability insurance and the impact it was having on patients' access to quality health care, the Maryland General Assembly was called into Special Session in December of 2004 and HB 2 was the result. HB 2 was corrected by additional legislation during the 2005 Session which resulted in SB 836. As a result of this legislation, the Maryland Health Care Rate Stabilization Fund was created and rising medical professional liability insurance rates charged by an admitted carrier were able to be subsidized, in part, by the State.³ The subsidy factor in calendar year 2006 has been impacted by the unanticipated decision of the Medical Mutual not to seek a rate increase for calendar year 2006.⁴ Additionally, 5% of the balance of the Rate Stabilization Account has been set aside to assist the new carrier that is applying to enter the Maryland medical professional liability marketplace.

Exhibits C through E display a comparison of medical professional liability premiums by insurer and by territory⁵ for three specialties: Emergency Medicine, Family Practice, and OB/GYN. The premiums are base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

Exhibits C1-C3 compares the premiums for Emergency Medicine among the five admitted insurers by territory. Only two insurers do not have rates available for an Emergency Medicine class: NCRIC and the Doctors Company.

³ Pursuant to SB 836, the premium increase was limited to 5% in calendar year 2005 policies over what the physicians and surgeons had paid in 2004.

⁴ As a result, the subsidy factor for policies renewing in calendar year 2006 has been determined to be 25%.

Exhibits D1-D3 compares the premiums for Family Practice among the five admitted insurers by territory. The only insurer that does not have a rate available is Medical Protective for the class of Family Practice with minor surgery.

Exhibits E1-E3 compares the premiums for OB/GYN doctors among the five admitted insurers by territory. All five insurers have a rate for an OB/GYN physician.

Further, in accordance with HB 2 and the newly enacted Section 2-303.2 of the Insurance Article, the MIA has prepared a Comparison Guide to Medical Professional Liability Insurance Rates which will be on the MIA website and available in brochure form shortly. This Comparison Guide will be updated on an annual basis to assist consumers in comparison shopping of medical professional liability insurance.

⁵ Territory 1 consists of Baltimore City and Baltimore County, Territory 2 includes Anne Arundel, Howard, Montgomery and Prince George's Counties, and Territory 3 is the rest of the State.

IV. Past Reports on Availability and Affordability

The MIA's past reports on the availability and affordability of health care medical malpractice insurance in Maryland were completed and submitted to the Legislative Policy Committee in accordance with Chapter 639 of the Acts of 1986. Originally, Chapter 639 was to sunset on October 31, 1996, but legislation was introduced and passed in the 1996 Regular Session (SB 138) that extended the sunset date until October 31, 2001. Due to the 2001 sunset, the MIA's last report on the availability and affordability of health care medical malpractice insurance was submitted to the Legislative Policy Committee in December of 2001. Additionally, Maryland Regulation COMAR 31.08.07, Medical Malpractice - Closed Claims Surveys, which provided a mechanism for insurers to report closed claims data to the MIA, was repealed effective October 27, 2003. Thus, there has been no mechanism in place for the MIA to collect, analyze and monitor the medical professional liability insurance market for some period of time.

In July of 2004, the National Association of Insurance Commissioners (“NAIC”) submitted its Medical Malpractice Insurance Report: A Study of Market Conditions and Potential Solutions to the Recent Crisis.⁶ The report noted that its analysis of the data was only as good as the data itself and that while the data showed, in broad terms, that there was a problem in the medical professional liability insurance marketplace, it was not sufficiently detailed to enable a detailed examination of where and to what extent

⁶ The Report was presented to the NAIC’s Property and Casualty (C) Committee and later adopted by the NAIC at the plenary meeting in September of 2004.

problems exist.⁷ The NAIC Report acknowledges that only closed claim data collected by individual states allows one to determine what drives losses, whether medical expense and economic damages, or non-economic and punitive damages, in that particular state and thus, by extension, what drives rates. The same need for detailed data was noted by the authors of a study of Texas medical malpractice claims from 1988 through 2002.⁸ With the enactment of SB836 (2005), the MIA will now be collecting this data and will, hopefully, be able to monitor trends in the marketplace. Once the data is collected, it should prove useful in reviewing the relationship between medical professional liability insurance rates and awards and settlements. However, this data will not be collected overnight and it will take some period of time to build the database upon which a thorough analysis can be based.

⁷ The problems within the medical professional liability insurance market are not just a problem in Maryland, but are a national problem.

⁸ Stability, Not Crisis: Medical malpractice Claims Outcomes in Texas, 1988-2002, Black, Bernard; Silver, Charles; Hyman, David A.; and Sage, William M. published in the Journal of Empirical Legal Studies, Volume 2, Issue 2, July, 2005.

V. Proposed Regulation

In order to prepare the annual report in accordance with SB 836, the Commissioner will adopt regulations on the submission of information described in §4-405 of the Insurance Article. The MIA has proposed a regulation for medical professional liability insurers to report claims data via an on-line survey to be completed on a quarterly schedule as follows:

Insurers shall submit completed surveys for all applicable claims closed during each calendar year, within 90 days after the end of each quarter. For calendar years 2005 and 2006, insurers shall submit a survey in accordance with the following schedule:

- For the first, second, and third quarters of 2005, submit a survey by December 31, 2005.
- For the fourth quarter of 2005, submit a survey by March 31, 2006.
- For the first quarter of 2006, submit a survey by June 30, 2006.
- For the second quarter of 2006, submit a survey by August 31, 2006.
- For the third quarter of 2006, submit a survey by December 31, 2006.
- For the fourth quarter of 2006, submit a survey by March 31, 2007.

For calendar year 2007 and subsequent calendar years, insurers shall submit a survey within 90 days after the end of quarter.

Exhibit B contains the proposed regulation. Once the comment period is closed, the MIA will make any modifications to the claims reporting survey as warranted and then proceed with the formal adoption of the regulation.

With the implementation of the new legislation, the MIA can begin to collect detailed data which is expected to be helpful in reviewing and analyzing the relationship between medical professional liability insurance rates and awards and settlements. This data

should enable the MIA to assess trends in the marketplace as they begin to develop and before they reach crisis.

VI. Summary

Maryland's physicians and surgeons have five (5) admitted insurers⁹ from which to choose when considering their professional liability insurance needs. Under the prior approval rate-making laws of Maryland, it does not appear that 1) competition is prohibited or discouraged, and 2) medical professional liability coverage is not available in the admitted market.

Maryland physicians and surgeons have choices with respect to coverages and pricing: five admitted insurers, in addition to various surplus lines carriers and risk retention groups. The MIA fully anticipates the entry of a new carrier into the medical professional insurance market sometime in 2006 which means that Maryland physicians will have yet another choice as they shop to obtain the best coverage for their dollars. Further, the affordability of medical professional liability insurance has been eased by the Rate Stabilization Fund and the monies provided by the State to assist physicians by providing a partial subsidy of their premium.

The Maryland Insurance Administration regulates the medical professional liability market by:

- Approving rates to ensure that they are not excessive, inadequate or unfairly discriminatory;

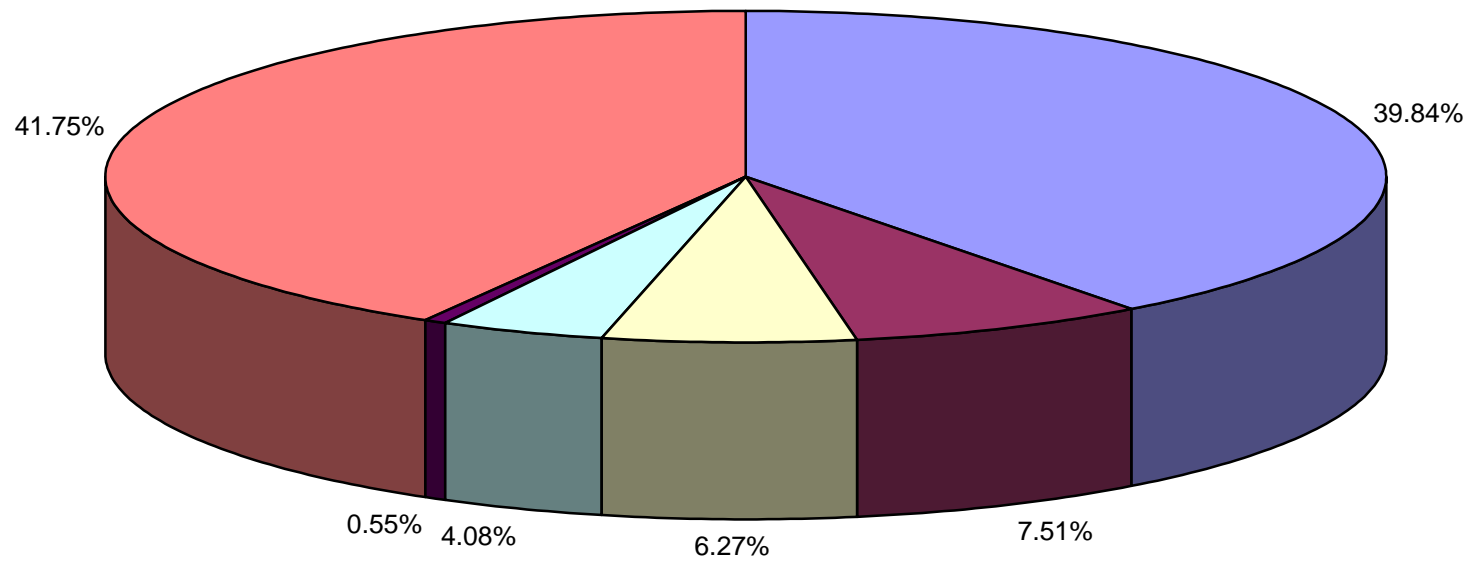
⁹ Please note that not all physicians and surgeons will be eligible for coverage with each of the five (5) carriers identified. Each company operates with separate and distinct underwriting guidelines which reflect the amount and type of risk they are willing to insure.

- Maintaining a Consumer Education and Advocacy Unit to assist consumers with understanding the insurance products that are available;
- Publishing a professional liability insurance premium comparison guides to assist healthcare providers in comparing premiums so they can make informed choices with regard to the coverages they may elect to purchase; and
- Collecting claims data to enable the MIA to review, analyze and assess the condition of the medical professional liability insurance market within the State.

VII. Exhibits

- Exhibit A: Distribution of Market Share of Medical Professional Liability Insurance in Maryland, Physicians and Surgeons, 2004**
- Exhibit A2: Market Share of Medical Professional Liability Insurance in Maryland, Physicians and Surgeons, 2004**
- Exhibit B: Proposed Regulation: Medical Professional Insurers On-Line Claim Survey Reporting Requirements**
- Exhibit C1: Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Baltimore City and Baltimore County, Territory 1**
- Exhibit C2: Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2**
- Exhibit C3: Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine, Rest of State, Territory 3**
- Exhibit D1: Comparison of Annual Medical Professional Liability Premiums for Family Practice, Baltimore City and Baltimore County, Territory 1**
- Exhibit D2: Comparison of Annual Medical Professional Liability Premiums for Family Practice, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2**
- Exhibit D3: Comparison of Annual Medical Professional Liability Premiums for Family Practice, Rest of State, Territory 3**
- Exhibit E1: Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Baltimore City and Baltimore County, Territory 1**
- Exhibit E2: Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Anne Arundel, Howard, Montgomery, and Prince George's Counties, Territory 2**
- Exhibit E3: Comparison of Annual Medical Professional Liability Premiums for OB/GYN, Rest of State, Territory 3**

Exhibit A
Distribution of Market Share of Medical Professional Liability Insurance in Maryland
Physicians and Surgeons
2004



Note: All Other includes surplus lines, risk retention groups, and carriers who insure healthcare providers other than physicians and surgeons.

Exhibit A2

Market Share of Medical Professional Liability Insurers in Maryland Physicians and Surgeons

Name of Insurer	2004 Market Share
Medical Mutual Liability Insurance Society of Maryland	39.84%
Medical Protective Company	7.51%
Doctors Company	6.27%
NCRIC, Inc.	4.08%
Preferred Professional Insurance Company	0.55%
*All Other	41.75%
Total	100.00%

*Note: All Other includes surplus lines, risk retention groups, and insurers who insure healthcare providers other than physicians and surgeons.

Proposed Regulation

Medical Professional Insurers On-line Claim Survey Reporting Requirements

Authority: §4-401 and §4-405 of the Insurance Article

Purpose

In accordance with §4-401 and §4-405 (SB 836 - 2005), the purpose of this chapter is to collect information regarding medical professional liability insurance, reinsurance and claims, which will allow the Insurance Commissioner to prepare an annual report to the legislature on the availability of health care malpractice insurance in the State.

Each medical professional liability insurer must complete and submit an online claims survey form, which is set forth in regulation ____ of this chapter.

Scope

For each claim filed with the Director of Health Care Alternative Dispute Resolution Office under §3-2A-04 of the Courts Article, each insurer providing professional liability insurance to a health care provider in the State shall submit to the Commissioner the following information.

Filing Requirements

On or before April 30, 2006, insurers shall submit information for calendar year 2005 on:

Part I: General Reporting Requirements

- The nature and cost of reinsurance
- The claims experience, by category, of health care providers
- The amount of claim settlements and claim awards
- The amount of reserves for claims incurred and incurred but unreported claims
- The number of structured settlements used in payment of claims

When submitting this information, an insurer shall notify the Commissioner of any information that the insurer considers proprietary. The Commissioner will find this information to be confidential commercial information in accordance with §10-617 of the State Government Article.

For calendar year 2006 and subsequent years, submissions shall be submitted by April 30 of the following year.

Part II: Closed Claim Reporting Requirements

Insurers shall submit completed surveys for all applicable claims closed during each calendar year, within 90 days after the end of each quarter. For calendar years 2005 and 2006, insurers shall submit a survey in accordance with the following schedule:

- For the first, second, and third quarters of 2005, submit a survey by December 31, 2005.
- For the fourth quarter of 2005, submit a survey by March 31, 2006
- For the first quarter of 2006, submit a survey by June 30, 2006
- For the second quarter of 2006, submit a survey by August 31, 2006
- For the third quarter of 2006, submit a survey by December 31, 2006
- For the fourth quarter of 2006, submit a survey by March 31, 2007

For calendar year 2007 and subsequent calendar years, insurers shall submit a survey within 90 days after the end of quarter.

An insurer shall report any claim or action for damages for personal injury if the claim or action resulted in:

- A final judgment in any amount;
- A settlement in any amount; or
- A final disposition that does not result in payment on behalf of the insured

Closed claim online survey instructions

General Instructions

Closed claims on policies that had a primary carrier and an excess carrier should be reported by the primary carrier only. The primary carrier should include the total settlement amounts in the case, even those covered by the excess carrier.

Only claims arising in Maryland or involving a Maryland medical professional liability insurance policy are to be included in the survey. If an injury occurred in another state, but the claim was settled under Maryland law, the claim file should not be included unless a Maryland medical professional liability insurance policy was involved.

If the file contains more than one claimant for one specific incident, and all of the claims are based on the same injury or death (i.e. several family members are claimants for the death of a family member), only one survey form should be completed for the case. The amounts settled should reflect amounts paid to all claimants in the case.

But, if the file contains multiple claimants when each one is based on the same incident, but on a different injury, then a separate entry should be completed for each claimant.

Specific Instructions

All data required by Part I and Part II must be submitted using the MIA's on-line survey format. Each submission must contain the following information:

Part I: General Reporting Requirements

Each answer to the following should be identified as whether or not the information provided includes proprietary information.

1. The nature and cost of reinsurance
2. The claims experience, by category, of health care providers
3. The amount of claim settlements and claim awards
4. The amount of reserves for claims incurred and incurred but unreported claims
5. The number of structured settlements used in payment of claims

Part II: Closed Claim Reporting Requirements

Name of insurer

Name of insurer group

Claim file ID

Name of person completing the form

(area code) telephone number

Date form completed

Date of injury

Date injury reported to insurer

Date claim closed

Age of injured person at time of injury

Gender of injured person at time of injury

Type of injury - wrongful death, permanent disability, or other bodily injury

Description of injury

Name of health facility where injury occurred

Type of medical professional liability policy - occurrence, claims made-basic, claims made-tail

If known, the type of patient - inpatient, emergency room outpatient, other outpatient or Unknown

Physician ISO classification, or equivalent classification

Type of health care provider category - physician-no surgery, surgeon, psychiatrist & related specialties, nurse, nurse midwife, optometrist, pharmacist, chiropractor, podiatrist, psychologist, dental, hospital or other healthcare facility, nurse anesthetist.

Physician and surgeon classification -name of specialty

Health care provider name

Health care provider license number

Policy limits for each claim or medical incident

Policy limits for annual aggregate

If known, the facility, office, or county where injury occurred

Was this a zero payment claim file - yes or no

The full name and location of the court where the suit was filed and the case was tried

The case or docket number

Whether settlement was reached or award was made at one of the following stages: arbitration, mediation, before suit was filed, after suit was filed, but before trial, during trial, but before court verdict, court verdict, after verdict, or after appeal was filed.

If settlement was reached or award was made by court verdict, whether the result was: directed verdict for plaintiff, directed verdict for defendant, judgment notwithstanding the verdict for the plaintiff, judgment notwithstanding the verdict for the defendant, judgment for plaintiff, judgment for the defendant, for plaintiff, after appeal, for defendant, after appeal, or any other

If there was no final judgment or settlement, the date of the final disposition

If there was no final judgment or settlement, the reason for the final disposition

If case did go to trial, whether the case was tried by a jury or tried by a judge

The total amount paid to the claimant

The amount paid by the insurer

The amount paid by the insured due to retention or deductible

If known, the amount paid by an excess carrier

If known, the amount paid by the insured due to settlement or award in excess of policy limits
Do not include deductible or retention amounts

If known, the amount paid by the insurer due to settlement or award in excess of policy limits
Do not include deductible or retention amounts

If known, the amount paid by other defendants or contributors

A summary of the occurrence from which the claim or action arose

A description of the misdiagnosis or alleged misdiagnosis made, if any, of the patient's actual condition

A description of the procedure giving rise to the claim

A description of the principal injury giving rise to the claim

Please identify the amount of past medical expenses claimed by the plaintiff(s)

Please identify the amount of future medical expenses claimed by the plaintiff(s)

Please identify the amount of past lost wages claimed by the plaintiff(s)

Please identify the amount of future lost wages claimed by the plaintiff(s)

Please identify the amount of non-economic damages claimed by the plaintiff(s)

Please identify the amount of other damages claimed by the plaintiff(s).

Whether a structured settlement or periodic payment was used

If a structured settlement/periodic payment was used, the amount of immediate payment.

The present value of the projected total future payout (price of annuity if purchased)

The projected total future payout

What was the cost of the structure?

If a neutral expert was used, the findings of a neutral expert witness - Future Medical Expenses

If a neutral expert was used, the findings of a neutral expert witness - Future Loss of Earning

If case was tried to verdict, the amount awarded to past medical expenses

If case was tried to verdict, the amount awarded to future medical expenses

If case was tried to verdict, the amount awarded to past lost wages

If case was tried to verdict, the amount awarded to future lost wages

If case was tried to verdict, the amount awarded to non-economic damages

If case was tried to verdict, the amount awarded to other damages.

The total allocated loss adjustment expense

Of the total allocated loss adjustment expense, what amount represents fees paid to defense counsel?

Of the total allocated loss adjustment expense, the amount of expenses not included in the defense counsel fees

Was there a claim made for extra contractual damages? Yes or no

What was the amount claimed for extra contractual damages?

Was a suit filed or claim made for extra contractual damages? Yes or no

If suit was filed for extra contractual damages claim, where was the suit filed? Provide the full name of the court where the suit was filed and the case was tried.

If suit was filed for extra contractual damages provide the case number or docket number

Was the extra contractual damages claim settled or tried

If tried, was it before a judge or jury?

What amount was paid for the extra contractual damages claim?

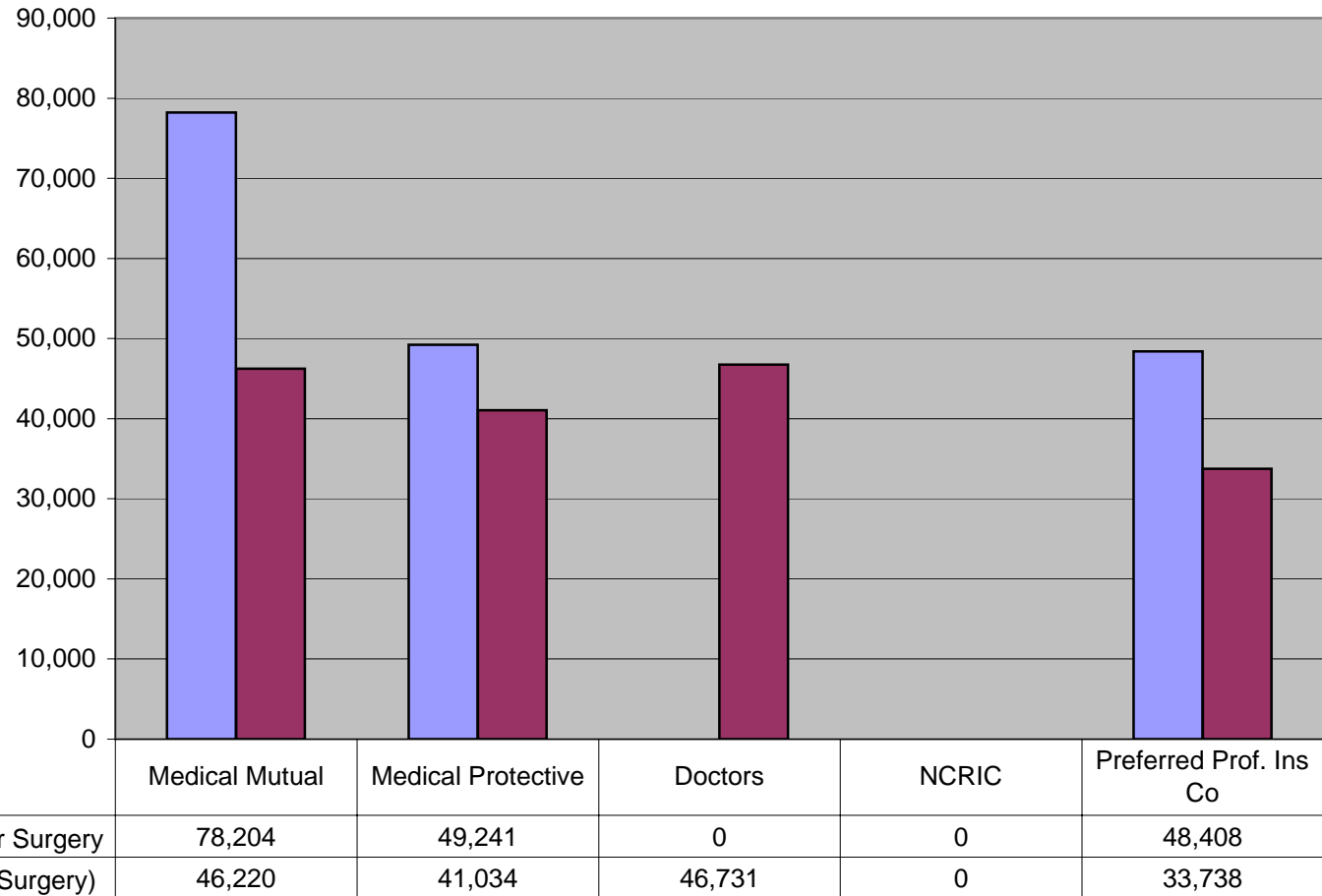
Did either party to the case file an appeal? Court of Special Appeals, Court of Appeals, or both

Which party filed the appeal?

Briefly describe the outcome of the appeal.

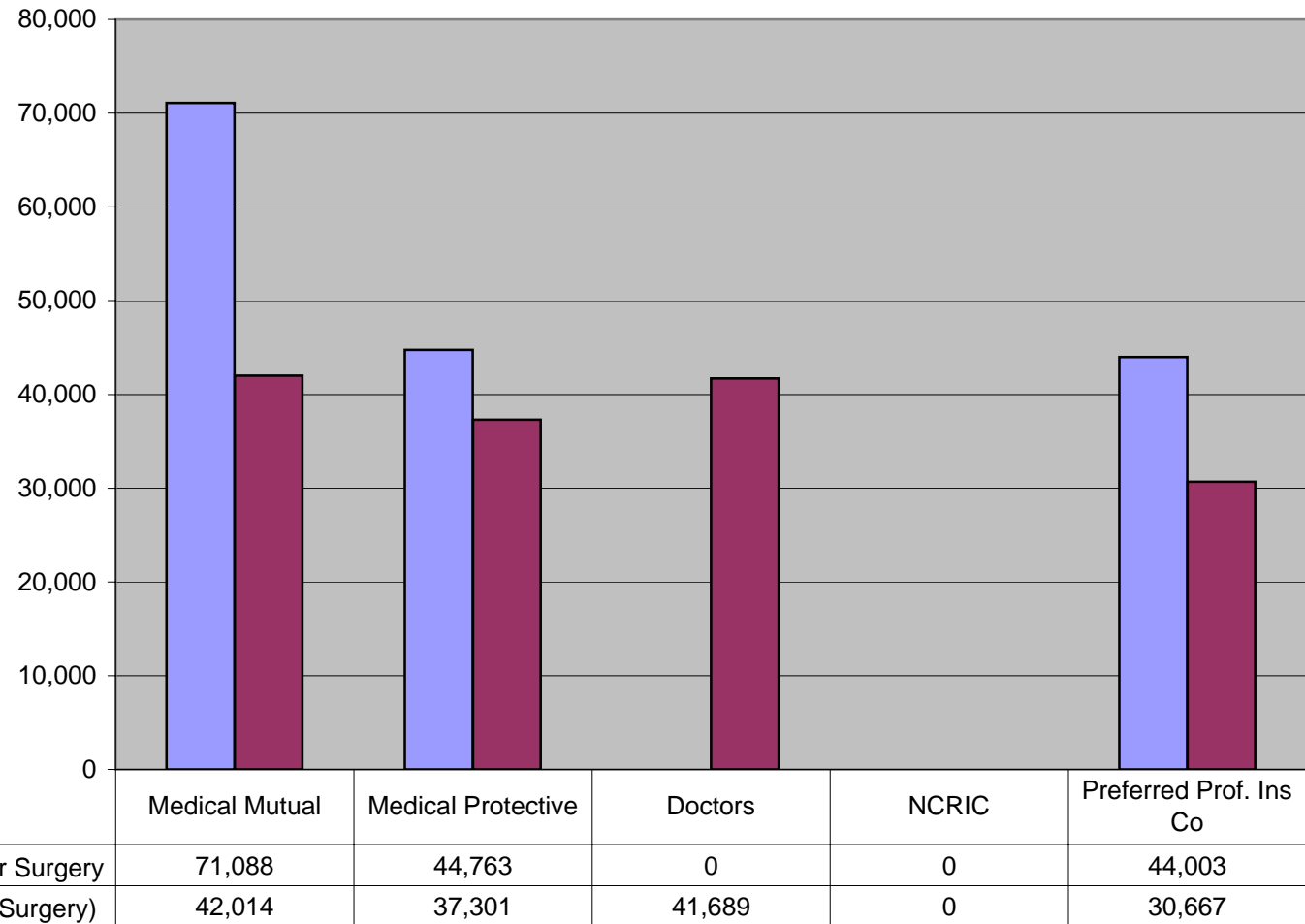
Failure to report in accordance with this regulation may result in the imposition by the Commissioner of a civil penalty of up to \$5,000.

Exhibit C1
Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine
Baltimore City and Baltimore County
Territory 1



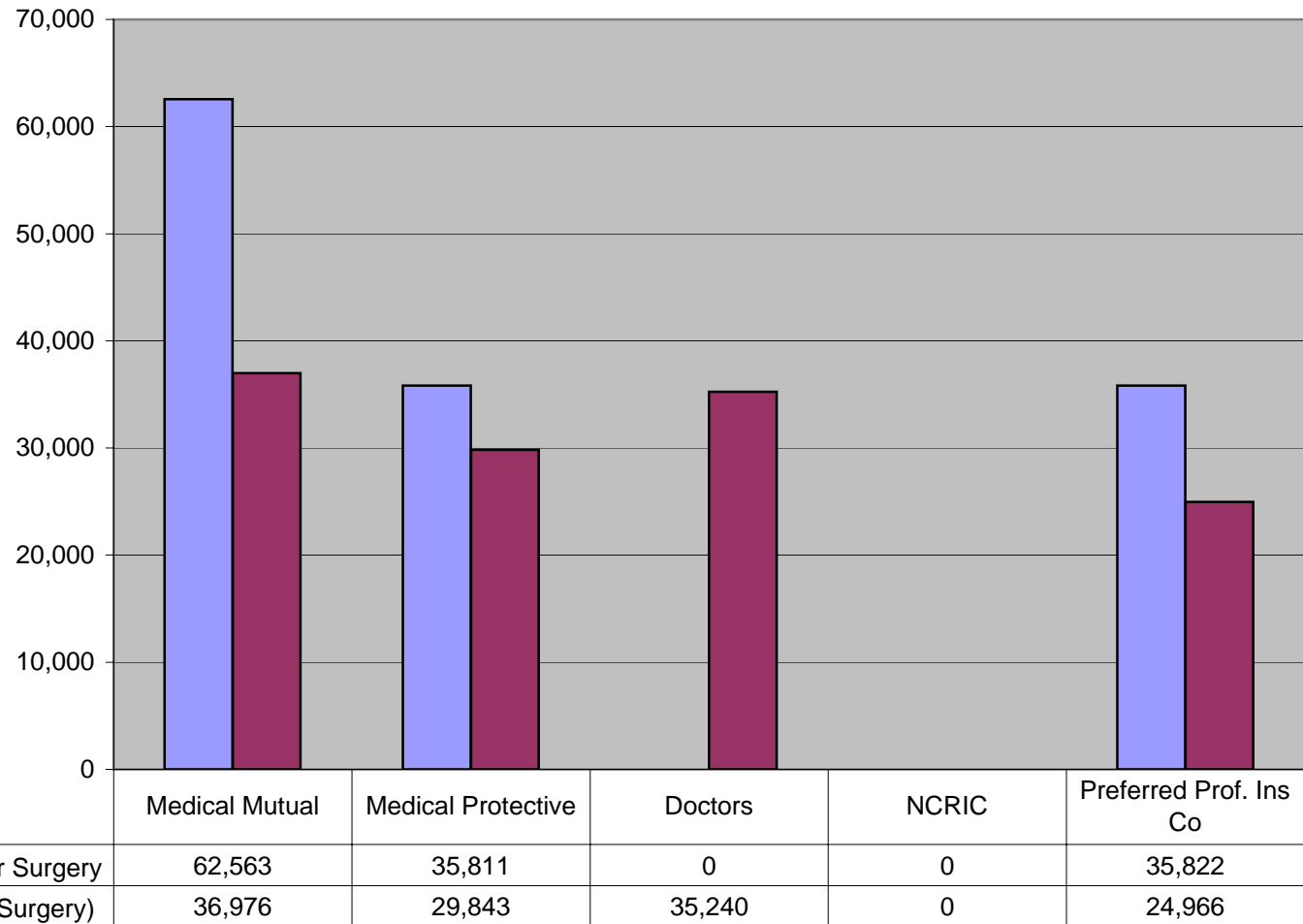
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

Exhibit C2
Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine
Anne Arundel, Howard, Montgomery, and Prince George's Counties
Territory 2



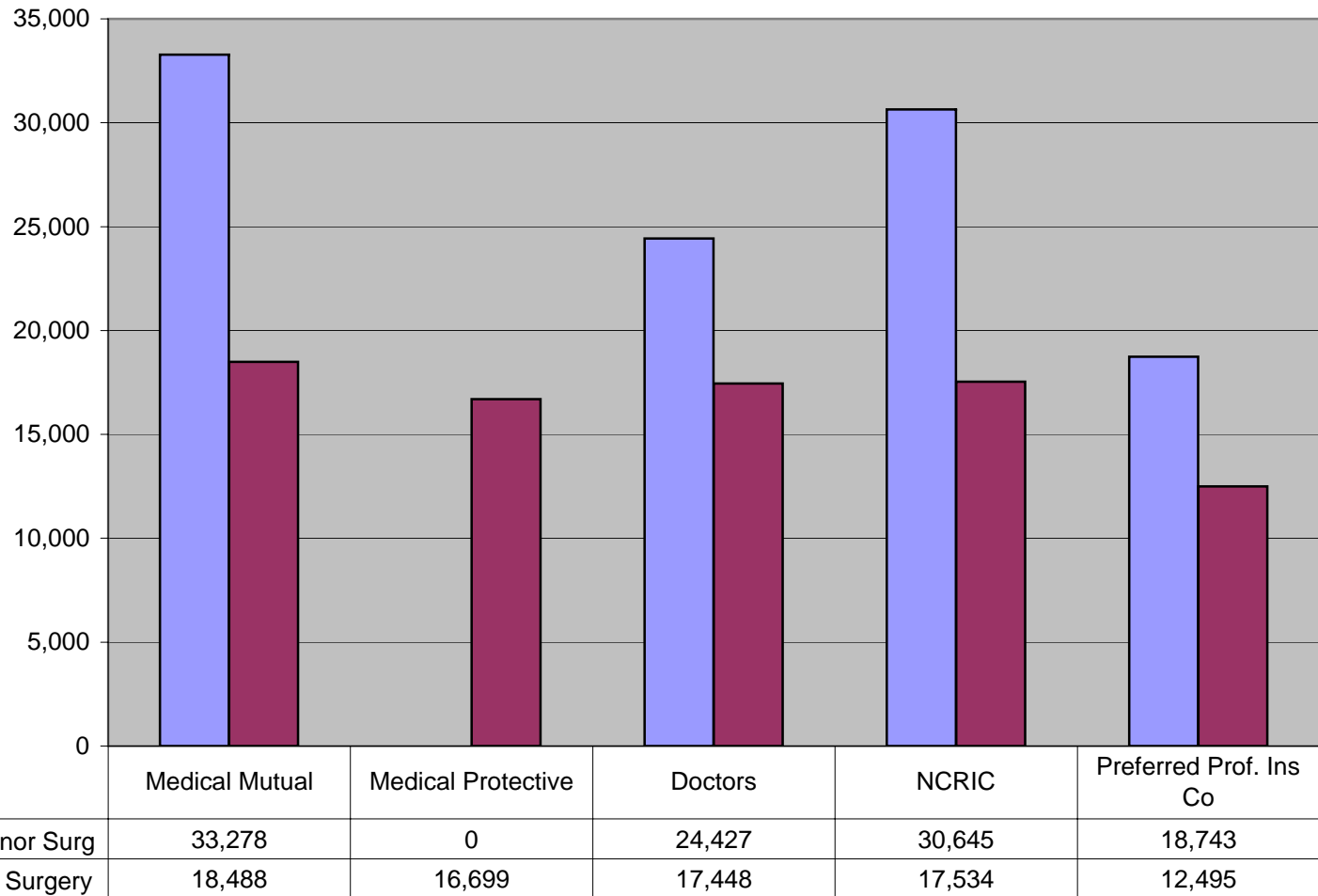
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

Exhibit C3
Comparison of Annual Medical Professional Liability Premiums for Emergency Medicine
Rest of State
Territory 3



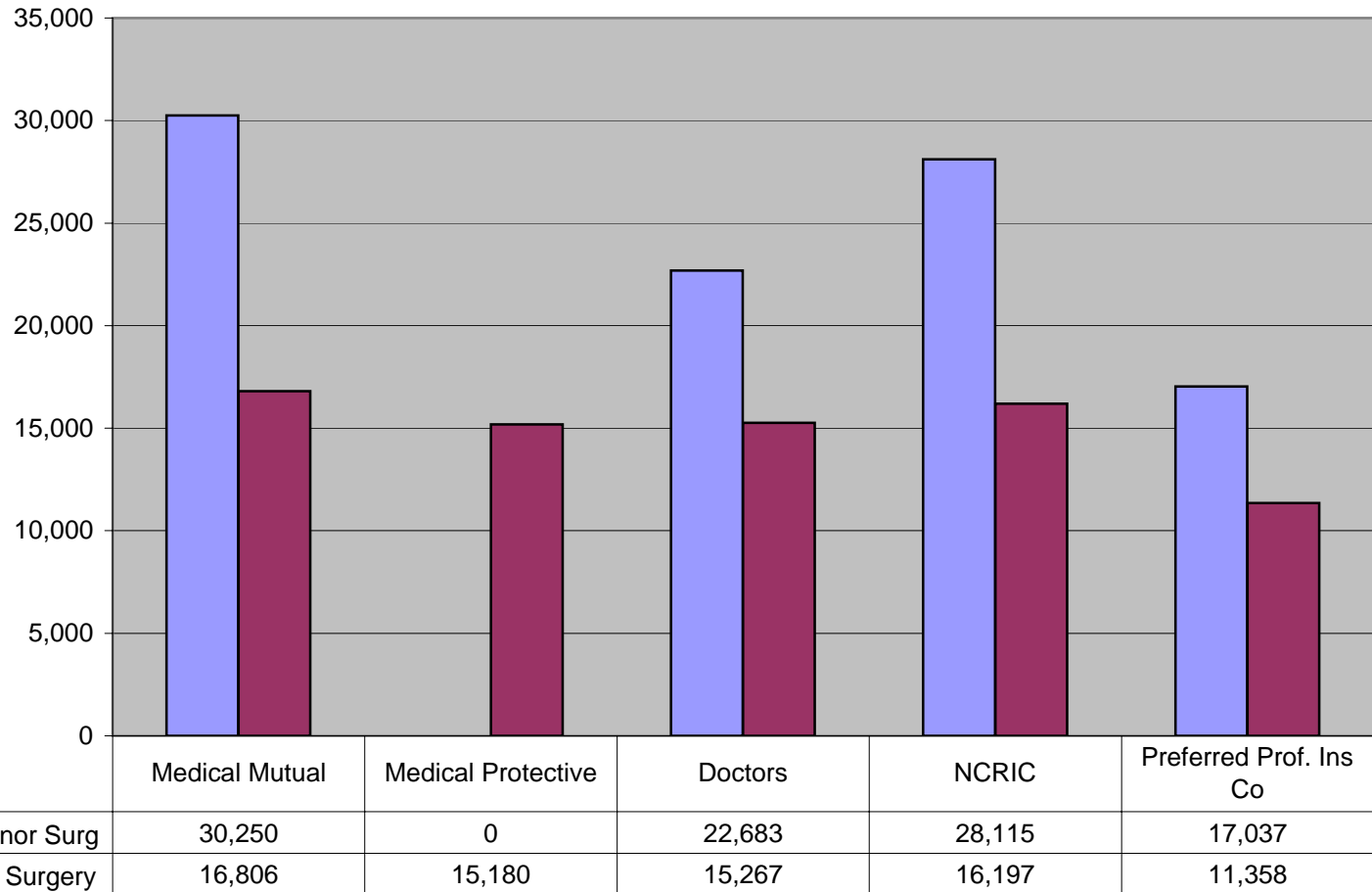
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,00 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

**Exhibit D1
Comparison of Annual Medical Professional Liability Premiums for Family Practice
Baltimore City and Baltimore County
Territory 1**



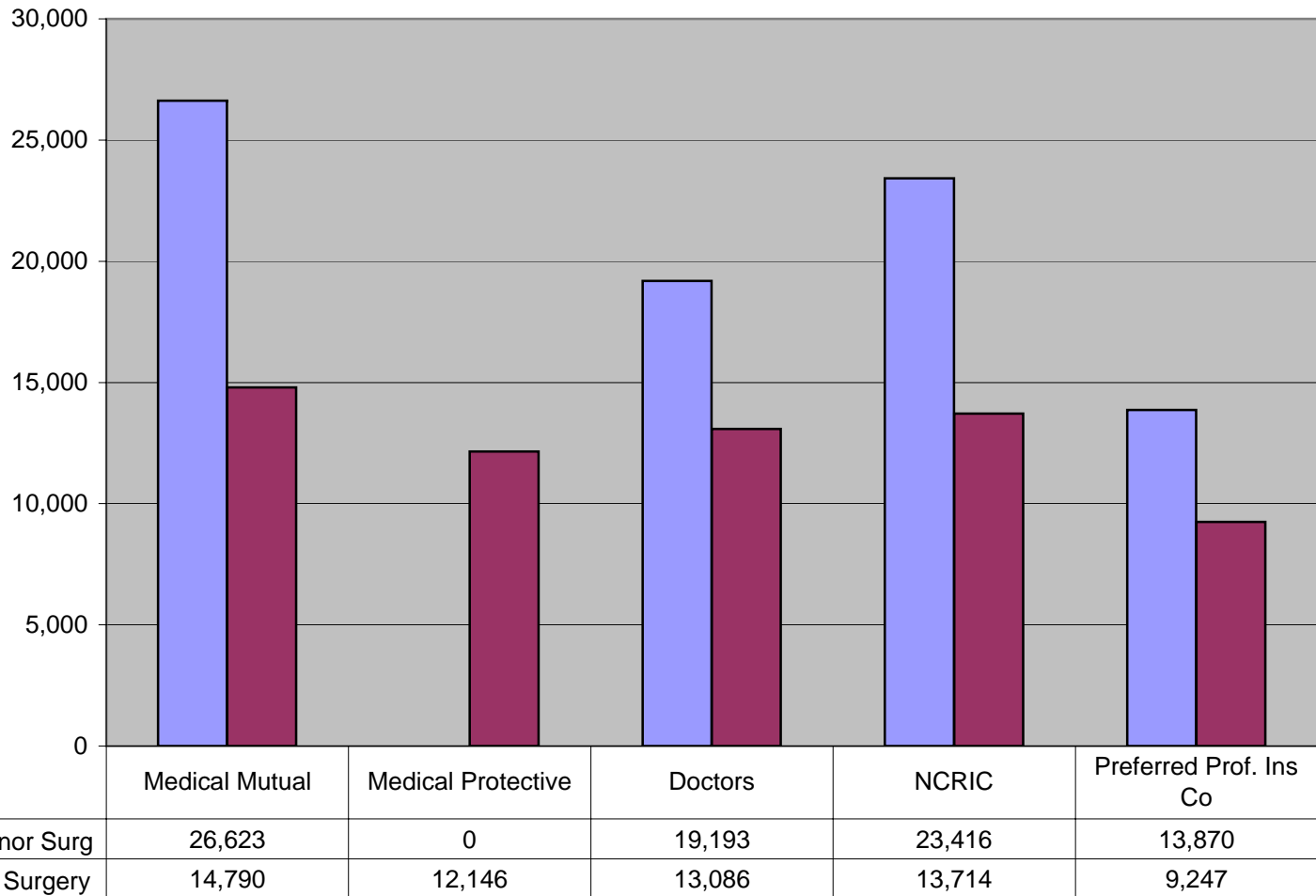
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,00 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

Exhibit D2
Comparison of Annual Medical Professional Liability Premiums for Family Practice
Anne Arundel, Howard, Montgomery, and Prince George's Counties
Territory 2



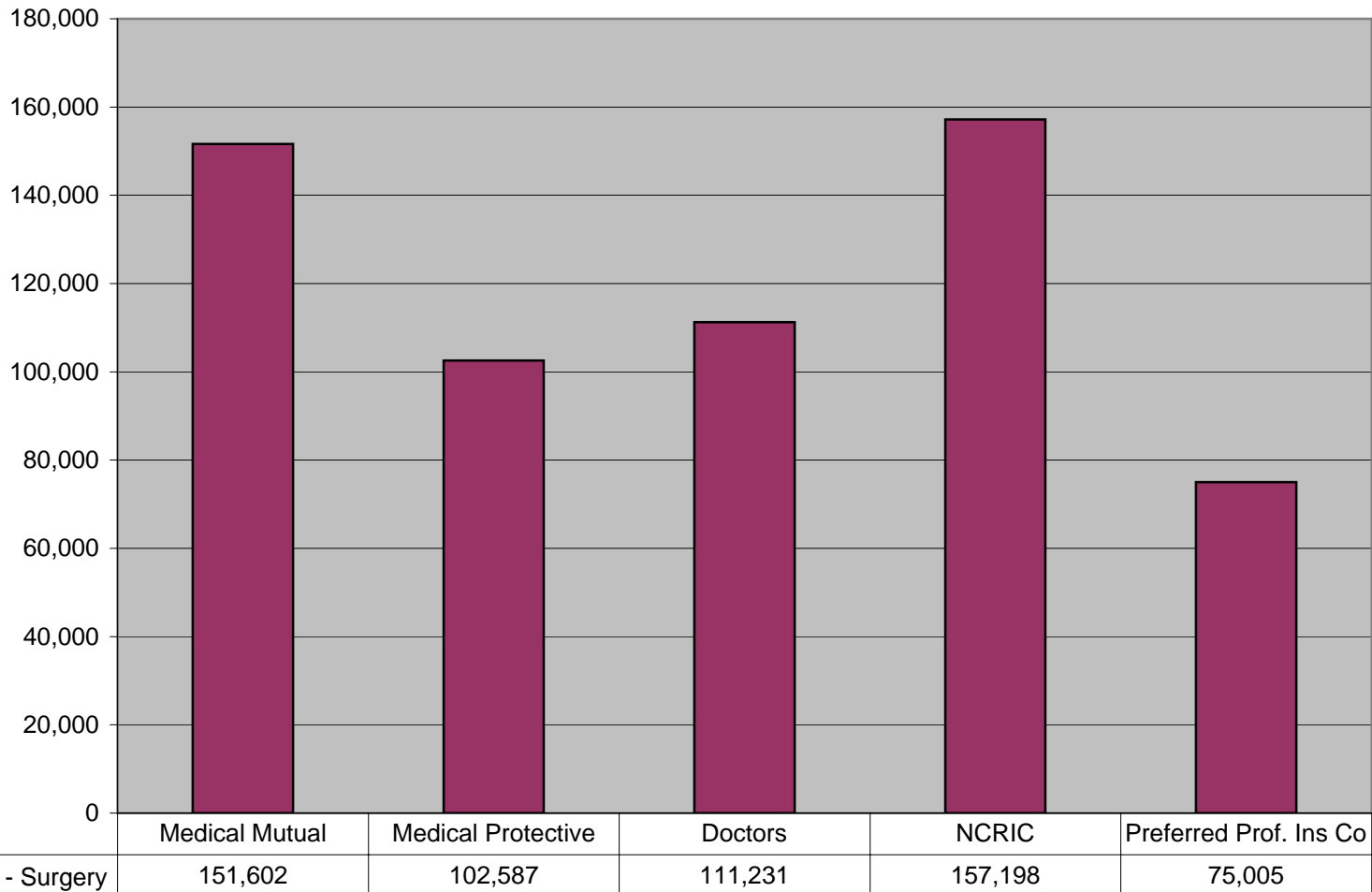
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,00 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

**Exhibit D3
Comparison of Annual Medical Professional Liability Premiums for Family Practice
Rest of State
Territory 3**



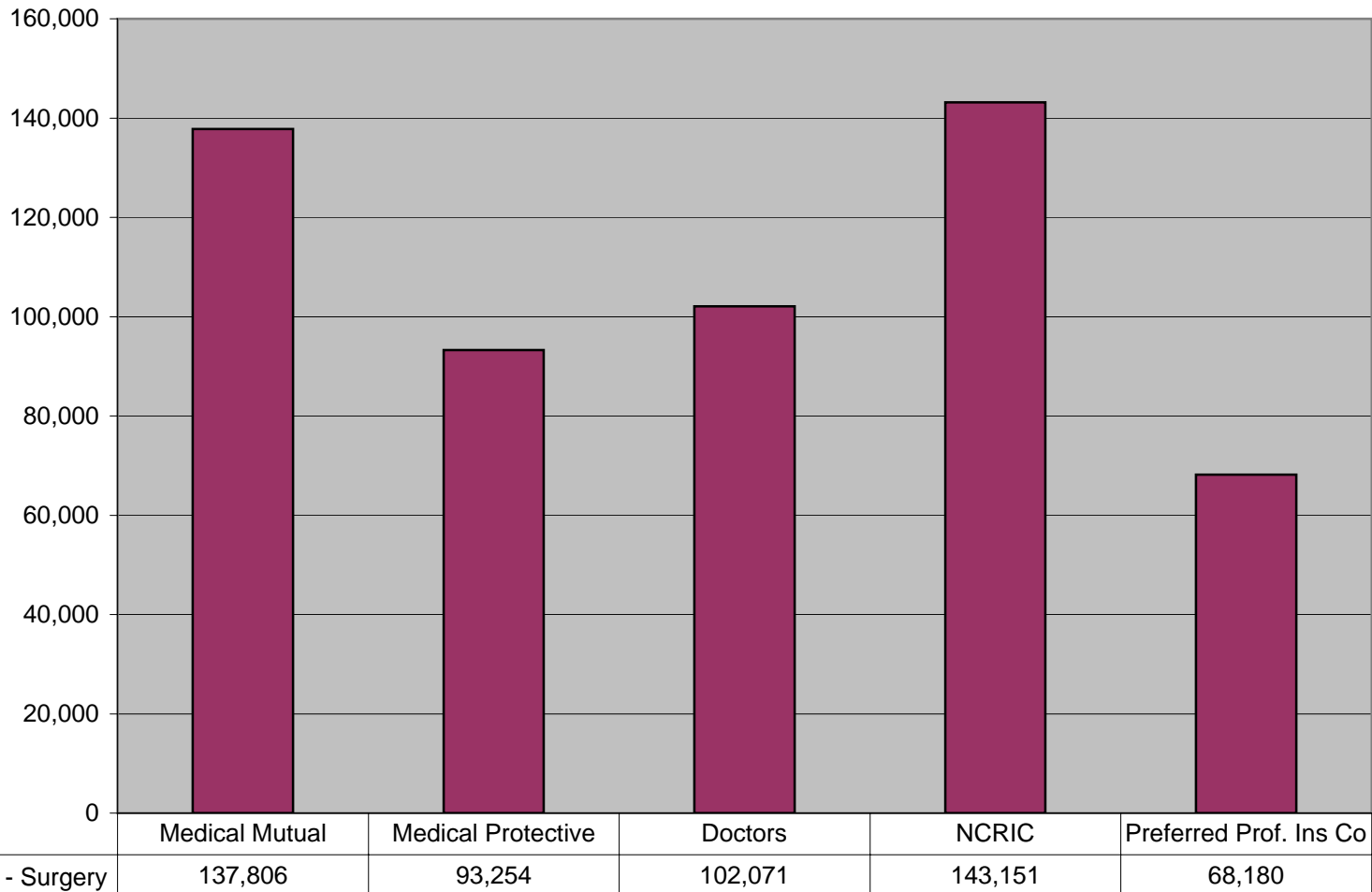
Notes: No premiums are shown where an insurer does not have rates available for a defined class. Base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

**Exhibit E1
Comparison of Annual Medical Professional Liability Premiums for OB/GYN
Baltimore City and Baltimore County
Territory 1**



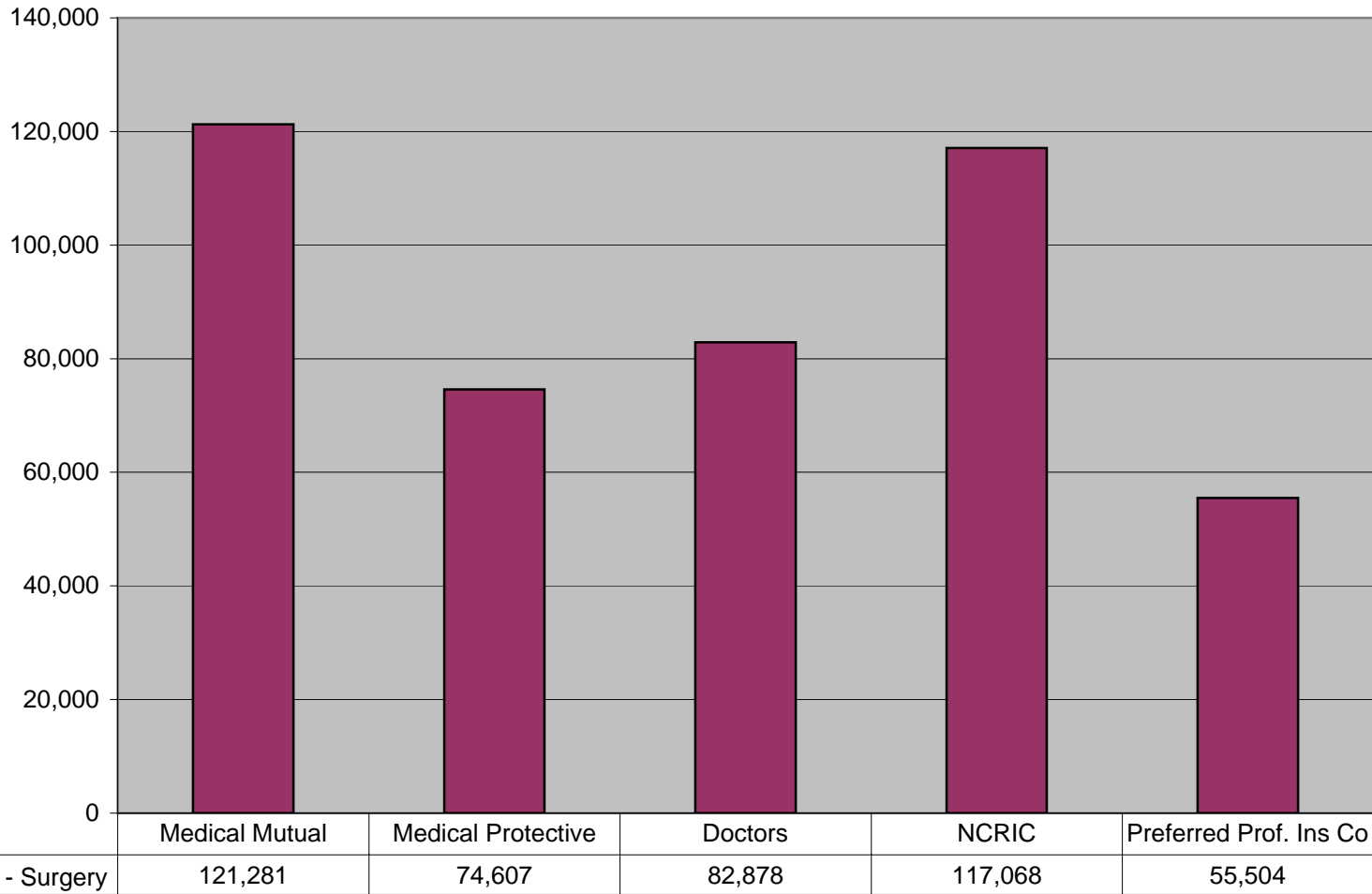
Base premiums for policy limits of \$1,000,000 per incident / \$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

Exhibit E2
Comparison of Annual Medical Professional Liability Premiums for OB/GYN
Anne Arundel, Howard, Montgomery, and Prince George's Counties
Territory 2



Base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.

**Exhibit E3
Comparison of Annual Medical Professional Liability Premiums for OB/GYN
Rest of State
Territory 3**



Base premiums for policy limits of \$1,000,000 per incident/\$3,000,000 annual aggregate based upon mature claims-made rates in effect on July 1, 2005.