

Washington Proposal July 15, 2008

Section 4A(4) of the *Medical Professional Liability Closed Claim Reporting Model Law*  
Possible options for the Property and Casualty Insurance (C) Committee to consider

Option 1: Starting from the June 11, 2007, draft of the model law, add a subsection (c):

- (4) If a claim is covered by an insuring entity or self-insurer that fails to report the claim to the commissioner, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties.
  - (a) If a facility or provider is insured by a risk retention group and the risk retention group refuses to report closed claims and asserts that the federal liability risk retention act (95 Stat. 949; 15 U.S.C. Sec. 3901 et seq.) preempts state law, the facility or provider must report all data required by this Act on behalf of the risk retention group.
  - (b) If a facility or provider is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this Act on behalf of the unauthorized insurer.
  - (c) If a facility or provider is insured by a captive insurer and the captive insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this Act on behalf of the captive insurer.

---

Option 2: Starting from the model law as adopted by (C) Committee, insert *captive insurer* as shown:

- (4)
  - (a) If a court of competent jurisdiction determines that any self-insurer, risk retention group, captive insurer or unauthorized insurer is exempt from this Act due to a federal preemption or other cause, the facility or provider named in a medical professional liability claim must report all data required by this Act.
  - (b) In the absence of a ruling from a court of competent jurisdiction, if any self-insurer, risk retention group, captive insurer, or unauthorized insurer fails to report information required by this Act or asserts a federal exemption or other jurisdictional preemption, the commissioner may, at his or her sole discretion, grant a waiver from the reporting requirements of this Act.
  - (c) In the event that a waiver is granted under subsection A(4)(b) of this section, the facility or provider named in a medical professional liability claim must report all data required by this Act on behalf of the self-insurer, risk retention group, captive insurer or unauthorized insurer.