From: MB Kreidler
Sent: Tuesday, July 29, 2008 9:25 AM
To: 'Kevin McCarty (kevin.mccarty@fldfs.com)'
Cc: 'gdemas@bishca.state.vt.us'; Lee Barclay; Beth Berendt
Subject: Model law--captive issue

Kevin -

I understand that the Property and Casualty Insurance (C) Committee will soon be meeting to consider whether the Medical Professional Liability Closed Claim Reporting Model Law should be revised to deal with jurisdictional issues relating to captive insurers.

I believe that a careful revision of the model law--with respect to this one issue only--would make the model more likely to be adopted by Plenary. I am attaching a Word document containing two wording options that I hope the (C) Committee will consider. The first option is based on an early draft of the pertinent subsection of the model law, and the second is similar to the model law as adopted by the (C) Committee in March 2008.

As you know, Washington has played a significant role in drafting this model law, and I am still strongly interested in its adoption by the NAIC. Although Washington is not a member of the (C) Committee, I would like you to know that either one of the two options on the attached document would be acceptable to me.

If you'd like to discuss this, please give me a call.

Sincerely - Mike Kreidler.

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.