



June 23, 2008

Commissioner Sandy Praeger  
Chair, Executive Committee  
National Association of Insurance Commissioners  
2301 McGee Street  
Suite 800  
Kansas City, MO 64108-2662

Re: Medical Professional Liability Closed Claim Reporting Model Law (“Closed Claim Reporting Model” or “Model”)

Dear Commissioner Praeger:

The National Risk Retention Association (“NRRA”) is the association that represents the risk retention group and the alternative risk transfer industry. At the NAIC Summer 2008 National Meeting, the Executive Committee offered the opportunity to interested parties to comment on the Closed Claim Reporting Model. This letter includes NRRA’s comments.

This Model would, if adopted into state law, impose upon any “insuring entity” the duty to file reports regarding specified data with the insurance commissioner of the state in which health services are provided. A risk retention group (“RRG”) is included within the definition of “insuring entity” in Section 2.I(5) of the Model.

At least 21 states have laws that require insurers to report claims and settlement data. At least 16 of these states – Connecticut, Florida, Hawaii, Iowa, Illinois, Kentucky, Michigan, Missouri, North Carolina, Nebraska, Ohio, Pennsylvania, Tennessee, Texas, Washington and West Virginia – take, or have taken, the position that RRGs are required to comply with these requirements.<sup>1</sup>

These reporting requirements are clearly beyond that which is permitted to non-domiciliary states under § 3902(a) of the Liability Risk Retention Act (“LRRA”). 15 U.S.C. § 3902 et. seq. strictly limits what states other than the RRG’s state of domicile (“non-domiciliary states”) can impose on RRGs:

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<sup>1</sup> We have not done an exhaustive study on this issue and, therefore, there may be other states that have such laws that are not referenced above.

(a) Exemptions from State laws, rules, regulations, or order

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would –

- (1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to – ...

§3902(2)(1)(A) through (I) set forth the nine activities which can permissibly be imposed on a non-domiciliary RRG none of which include or relate to data reporting.

The NAIC itself acknowledges the strict limitations on non-domiciliary state regulatory authority under the LRRRA in its Risk Retention and Purchasing Group Handbook:

*With regard to preemption of state laws, the approach taken in the LRRRA in connection with RRGs is different than the approach taken in connection with PGs. Under Section 3902 of the LRRRA, with the exception of the domiciliary state, RRGs are exempt from all state laws, rules, regulations, or orders that would make unlawful, or would regulate, directly or indirectly, the operation of a RRG, as provided in the LRRRA.*

NAIC Risk Retention and Purchasing Group Handbook Section 1B, Pages 1-2.

Some states have incorrectly taken the position that these reporting requirements do not “regulate the operation of [an RRG’s] insurance business.” However, the reporting requirements, in fact, do exactly that. They require the non-domiciliary RRG to adopt recordkeeping procedures, file forms, maintain a reporting compliance program, etc. In addition, these laws create concerns for these medical/dental RRGs regarding disclosure of sensitive personal data and the resulting HIPAA and state privacy law compliance.

While NRRA opposes these data collection laws for reasons noted above, it does not object to the rationale supporting the laws, which is that state authorities can benefit from knowledge regarding medical and dental malpractice settlements. However, NRRA would like to point out that state legislatures have an alternative remedy, namely, imposing such a reporting requirement upon healthcare providers rather than their insurers.

NRRA is writing to clarify the rights and obligations of non-domiciliary states under the regulatory structure created by the LRRRA. These data reporting requirement laws are a national problem, and they impede the multi-state operation of RRGs, which was the pivotal

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issue that prompted Congress to enact the LRRRA. Approval by the NAIC of the proposed Model in its current form would further exacerbate this problem.

Therefore, we respectfully request that the Model be amended by deleting “risk retention group” from the definition of “insuring entity” in Section 2.I(5).

Sincerely yours,

A handwritten signature in black ink that reads "Rebecca Smart". The signature is written in a cursive, flowing style.

Rebecca Smart  
Chairman of the Board