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Governor
State of Missouri



Department of Insurance
Financial Institutions
and Professional Registration
Linda Bohrer, Acting Director

July 31st, 2008

Kevin McCarty, Chair
Property & Casualty (C) Committee
National Association of Insurance Commissioners

Re: Opt Out Provisions of the Medical Professional Liability Closed Claim Reporting Model

Dear Commissioner McCarty:

Thank you for the opportunity to express my concerns regarding proposals that have been submitted to the Property & Casualty (C) Committee that would exempt large segments of the medical malpractice insurance market from the reporting requirements of the model law. Missouri is one of a handful of states that has collected medical malpractice claims data for over three decades. In addition, Missouri has been actively involved with the development of the model via work on the former Statistical Information Task Force (since merged into the Casualty Actuarial and Statistical Task Force). I feel that our experience with data collection in general, as well as with the specific issues under consideration, may be helpful to you and committee members as you consider the implications of the various proposals.

The proposals permit not only captive insurers, but all non-licensed entities, including surplus lines companies, risk retention groups, and self-insured entities to opt out of reporting requirements. In the event that such entities opt out, the responsibility for reporting malpractice claims information reverts to the individual health care practitioners involved with the claim. I believe that adopting any language that exempts such a large segment of the market will produce insurmountable enforcement problems for state regulators, will undermine the goal of uniformity, and significantly degrade the quality and usefulness of any data collected. Please consider the following issues in your deliberations:

1. **Existing Flexibility.** The current model language already affords state regulators a great deal of flexibility in terms of enforcing reporting requirements with respect to non-licensed and self-insured entities. Under the current draft, any individual commissioner is authorized to grant specific exemptions to any of these market sectors as may be appropriate to accommodate differences in state markets and available regulatory resources. The proposals eliminate this flexibility and undermine the efforts of the majority of states that currently require such entities to report claims data.

2. **Uniformity.** Most states that currently collect claims data *do not* exempt non-licensed and self-insured entities. Any revisions along the lines of the “opt out” proposals would not conform to the predominant practice.

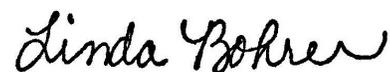
3. **Enforcement.** The opt out proposals would make the model unenforceable by state DOIs and greatly impair their ability to collect comprehensive data. As mentioned, the proposals would have medical practitioners themselves report the required data in lieu of carriers. Obviously, state DOIs have no means to enforce this provision, or even the means to determine who would be required to report. Even in the unlikely event that medical practitioners voluntarily reported, even in the absence of any external prompting, they simply would not have the necessary information to complete the forms. For example, it is unlikely that doctors would have information related to claims adjustment expenses and defense costs incurred by insurance carriers.

4. **Market Share.** Self-insurers, surplus lines, and risk retention groups constitute a significant share of the medical professional liability insurance market in most states. Attached is a table of market share data for 2007 for non-admitted carriers (*excluding self-insureds*). As you’ll note, surplus lines companies and RRGs constitute fully ¼ of the market nationwide and, as much, as 80 percent in at least one state.

Adding self-insureds to this data would unquestionably, significantly increase the market share represented by exempt entities. For example, Missouri has collected data from self-insureds for many years. Based on this data, the proportion of all claims that were reported by self-insureds was 21 percent in 2006, and 25 percent in 2007.

In summary, I believe the proposals are unenforceable and unworkable, and would greatly diminish the usefulness of any data collected pursuant to them. As you are unquestionably aware, the impetus for the model law was the recognition by the NAIC, the GAO, and other federal and state policymakers, that states lacked the data necessary to understand and effectively redress the dramatic dislocations in the medical malpractice market that occurred earlier this decade. The GAO considered the problem so serious that they formally stated to Congress that if the states failed to act, then the US Congress should intervene to remedy the data deficiency. I don’t believe that the NAIC should respond to these regulatory challenges in a partial or incomplete way. Any changes should preserve flexibility for those states that wish to obtain comprehensive data. Again, thank you for your consideration.

Linda Bohrer



Acting Director
Missouri Department of
Insurance, Financial Institutions, and
Professional Registration

Attachment

Medical Malpractice Market share of Non-admitted Carriers, by State, 2007

State	Licensed Insurers	Surplus Lines, RRGs	Total	% Non-admitted Market
AK	\$20,085,168	\$4,516,963	\$24,602,131	18.4%
AL	\$135,539,676	\$24,350,869	\$159,890,545	15.2%
AR	\$69,328,993	\$13,247,139	\$82,576,132	16.0%
AZ	\$214,488,323	\$78,727,312	\$293,215,635	26.8%
CA	\$640,971,070	\$268,236,854	\$909,207,924	29.5%
CO	\$154,926,246	\$27,893,798	\$182,820,044	15.3%
CT	\$137,153,460	\$80,268,096	\$217,421,556	36.9%
DC	\$31,941,483	\$9,621,716	\$41,563,199	23.1%
DE	\$36,827,795	\$5,739,695	\$42,567,490	13.5%
FL	\$484,871,279	\$177,950,346	\$662,821,625	26.8%
GA	\$243,715,113	\$88,130,996	\$331,846,109	26.6%
GU	\$500,001	\$163,219	\$663,220	24.6%
HI	\$20,004,639	\$14,669,247	\$34,673,886	42.3%
IA	\$66,141,671	\$28,961,978	\$95,103,649	30.5%
ID	\$29,925,409	\$14,452,727	\$44,378,136	32.6%
IL	\$553,235,822	\$106,566,274	\$659,802,096	16.2%
IN	\$105,856,756	\$24,761,127	\$130,617,883	19.0%
KS	\$86,104,709	\$12,011,850	\$98,116,559	12.2%
KY	\$122,812,143	\$51,044,272	\$173,856,415	29.4%
LA	\$78,250,962	\$29,305,622	\$107,556,584	27.2%
MA	\$174,294,356	\$127,084,714	\$301,379,070	42.2%
MD	\$228,351,495	\$94,296,772	\$322,648,267	29.2%
ME	\$49,331,660	\$8,394,342	\$57,726,002	14.5%
MI	\$201,794,092	\$42,986,814	\$244,780,906	17.6%
MN	\$77,345,462	\$22,634,975	\$99,980,437	22.6%
MO	\$173,959,837	\$42,639,443	\$216,599,280	19.7%
MS	\$11,004,562	\$45,096,152	\$56,100,714	80.4%
MT	\$28,583,790	\$20,206,867	\$48,790,657	41.4%
NC	\$200,515,012	\$93,070,694	\$293,585,706	31.7%
ND	\$14,887,085	\$3,093,320	\$17,980,405	17.2%
NE	\$33,615,454	\$3,349,371	\$36,964,825	9.1%
NH	\$31,988,952	\$11,143,461	\$43,132,413	25.8%
NJ	\$489,716,008	\$100,438,146	\$590,154,154	17.0%
NM	\$32,184,409	\$18,441,527	\$50,625,936	36.4%
NV	\$86,395,321	\$20,414,389	\$106,809,710	19.1%
NY	\$1,401,708,786	\$267,715,997	\$1,669,424,783	16.0%
OH	\$380,581,788	\$88,809,851	\$469,391,639	18.9%
OK	\$111,283,432	\$23,800,199	\$135,083,631	17.6%
OR	\$81,951,268	\$28,736,065	\$110,687,333	26.0%
PA	\$391,330,617	\$343,288,946	\$734,619,563	46.7%
PR	\$47,037,777	\$14,843,499	\$61,881,276	24.0%
RI	\$39,304,465	\$8,239,004	\$47,543,469	17.3%
SC	\$44,530,393	\$7,809,617	\$52,340,010	14.9%

State	Licensed Insurers	Surplus Lines, RRGs	Total	% Non-admitted Market
SD	\$22,599,966	\$3,108,963	\$25,708,929	12.1%
TN	\$220,071,401	\$118,658,347	\$338,729,748	35.0%
TX	\$270,457,870	\$121,302,115	\$391,759,985	31.0%
UT	\$59,141,228	\$13,264,893	\$72,406,121	18.3%
VA	\$192,422,329	\$90,209,427	\$282,631,756	31.9%
VI	\$37,654	\$68,354	\$106,008	64.5%
VT	\$11,307,594	\$8,445,296	\$19,752,890	42.8%
WA	\$171,304,465	\$68,654,967	\$239,959,432	28.6%
WI	\$103,127,602	\$10,954,092	\$114,081,694	9.6%
WV	\$63,641,242	\$19,059,261	\$82,700,503	23.0%
WY	\$17,838,270	\$6,536,414	\$24,374,684	26.8%
Total	\$8,696,326,360	\$2,957,416,394	\$11,653,742,754	25.4%