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August 17, 2007

Sent via Electronic Mail

Statistical Information Task Force  
c/o Mr. Joe Bieniek, Statistical Information Manager  
National Association of Insurance Commissioners  
[JBieniek@NAIC.org](mailto:JBieniek@NAIC.org)

Re: Data Confidentiality Issues and the Proposed Medical Malpractice Closed  
Claim Reporting Model Law

Dear Mr. Bieniek:

We write on behalf of the American Insurance Association with respect to the NAIC's proposed Medical Malpractice Closed Claim Reporting Model Law. Our comments at this time are primarily focused on the data confidentiality provisions in Section 6, though we continue to have concerns regarding the general scope of the model law and its application to surplus lines insurers.

We strongly believe that the confidentiality protection set out in Section 6 is imperative in this model. Section 6 provides that reported data will be confidential and privileged; will not be subject to open records laws, subpoena, or discovery; and will not be admissible in evidence in any private civil action. Section 6 also provides that any report produced using such data reported to the commissioner under this Act will not be so detailed that it permits readers to discern information about any particular insuring entity, self-insurer, facility, provider, claim or claimant. The appreciation of the importance of data confidentiality is evident in the language, which strikes an appropriate balance between the regulators' interest in collecting information and the legitimate privacy/confidentiality interests of stakeholders.

As we have previously stated, we strongly object to the inclusion of a drafting note following Section 6 that permits the removal of the confidentiality protection if states find "*it is desirable and feasible.*" The drafting note's retention directly undercuts the content of Section 6 and eliminates any prospect for uniformity amongst the states on the very critical issues of who will have access to the information and for what purpose.

Advancing the model in this way would undermine the NAIC's current guidelines for model laws, which require that an issue not only necessitate a national standard but also require uniformity amongst all states. Moreover, it would strike at the core of the confidentiality protection, which is intended to avoid the possibility that specific claims or claimants will be identified. The issue is not one of secrecy, but rather one of protection, especially in a time when heightened sensitivities about who has access to what data are evident everywhere.

We would also like to respond to the modifications made in Section 4.B. While these modifications indicate recognition of the issues implicated by including surplus lines, the solution does not satisfy the jurisdictional problem this presents. Consequently, we respectfully continue our objection to the inclusion of surplus lines at all. Similarly, we continue our concerns about the general scope of the proposed model. We believe that it is unnecessary to require insuring entities to report to a state every closed claim, regardless of specialty or the type of provider involved – particularly in the absence of a market crisis. When necessary, data collection efforts should focus on claims in those areas or specialties that show signs of stress in order to avoid the inefficiencies and costs associated with the unnecessary capture and reporting of information.

We look forward to continued discussion during next month's task force call, and we also welcome any immediate questions. Thank you for your time and consideration.

Sincerely,

Pamela Young  
Associate General Counsel and  
Director, Surplus/Specialty Lines  
& Producer Relations

Kenneth A. Stoller  
Senior Counsel

cc: Pamela K. Simpson