

November 20, 2007

The Honorable Kevin M. McCarty
Chairman, NAIC Property & Casualty (C) Committee
Commissioner of the Office of Insurance Regulation
200 East Gaines Street
Tallahassee, FL 32399-0305

SUBJECT: Draft NAIC Medical Malpractice Closed Claim Reporting
Model Law

Dear Commissioner McCarty:

The NAIC Statistical Information Task Force (SITF) has requested guidance from the Property & Casualty (C) Committee regarding the level of confidentiality that should be conferred upon the data collected as a result of a state enacting the medical malpractice closed claim reporting model law currently under development.

The Physician Insurers Association of America (PIAA), which is comprised of physician and other provider owned/operated medical professional liability insurance (MPLI) companies insuring the majority of America's doctors, has been fortunate to be able to monitor and participate in this process as an interested party. As the C Committee will soon be deliberating the request of the SITF, we now write to you to express our concern about the level of public access that might be designated in the final version of the model law.

At the onset, let me express our thanks to the NAIC for considering a model law which might standardize the many individual state reporting laws and requirements now in place and under development. MPLI insurers are faced with an increasing burden of complying with multiple state and other government reporting requirements, most of which do not share identical or even similar codification schemes.

The development of a model reporting mechanism has the potential to greatly simplify this process, and at the same time lower costs and provide more accurate and consistent data for use by regulators. We are, however, disappointed that the current model law draft makes no attempt to provide the consistency required by the newly-adopted NAIC model law adoption process, as the model law simply stipulates the general type of information to be collected without any attempt to define the data or propose a universal reporting mechanism. The PIAA is already on the record with the SITF requesting that this be considered, as well as the possibility of a centralized data collection process. Thus far, we are not aware that our recommendations have received any deliberate consideration.

As to the immediate matter at hand before the C Committee, we write to express concern regarding the level of public access which might be provided in the SITF model law, to include making all reported data available to the public, as offered as an option in the September 26, 2007 memorandum of the SITF to your Committee. As demonstrated by breaches in other similar data sets, such as the National Practitioner Data Bank, we feel that releasing detailed data to the public or any subset thereof has a high probability that the identity of individual practitioners or patients can be known, and we have previously supplied the SITF with examples of where this has happened.

While we fully support the efficient collection of useful MPLI data, we request that this information not be widely disseminated and reside in the hands of state insurance departments where it can be used in an accurate and confidential manner. We also request that your Committee consider the issue of the uniformity of the data identified by the current version of the draft model law, which requires each state to define the individual data elements identified and also develop its own data reporting process. While the same generic data might be collected by every state, each could have its own unique way of doing this, thus providing no significant improvement over the current uncoordinated process in place.

Thank you for your consideration of our concerns. Please do not hesitate to contact me if you have any questions or if I can provide further information.

Sincerely,

Lawrence E. Smarr
President

cc: NAIC Property & Casualty (C) Committee
Eric Nordman
Joe Bieniek