



**American Insurance Association**

1130 Connecticut Ave. NW

Suite 1000

Washington, DC 20036

202-828-7100

Fax 202-293-1219

[www.aiadc.org](http://www.aiadc.org)

January 14, 2008

Sent via Electronic Mail

Lee Barclay, Chair  
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: Proposed Medical Malpractice Closed Claim Reporting Model Law

Dear Mr. Barclay:

We write on behalf of the American Insurance Association (AIA) to continue AIA's comments on the proposed NAIC Medical Malpractice Closed Claim Reporting Model Law.

We recognize that there seems to be an interest in bringing closure to the discussion of this proposed model, but we continue to find it seriously problematic in its current form. The problems center on multiple issues: the confidentiality drafting note, the scope of the model, the required data elements, and the application to surplus lines.

At the request of the Task Force, we will direct our comments about the confidentiality drafting note to the parent committee, the Property/Casualty (C) Committee, with a copy to the Task Force.

While you are already familiar with our objection with respect to the model's inclusion of surplus lines, we do feel compelled to respond to the recent suggestion of the Missouri Department of Insurance on this subject. The current version of Section 4 at least recognizes jurisdictional limitations with respect to surplus lines business, and the model should not be further amended to impose additional barriers to a surplus lines insurer's assertion of a reporting exemption.

As we have previously noted, the scope of the proposed model is far too broad. The model requires insuring entities to report every closed claim, regardless of specialty or the type of provider involved. This overly expansive approach will result in unnecessary inefficiencies, as it mandates the collection of information pertaining to medical specialty areas that have not historically shown signs of stress, and impacts medical professionals other than physicians. Accordingly, we strongly recommend that the Task Force identify specific areas, and that claims involving “allied health” professionals be excluded from the model.

With respect to the proposal’s “required data elements” (Section 5), we believe there are several issues that must be considered in the context of compliance and data integrity. Consider, for example, circumstances where litigation has settled early in the process (e.g., at a pleadings stage before any discovery) and an insurer has not received all of the required data elements. What is the insurer to report? We also have concerns with several of the specific data elements. For instance, attempting to capture an injured person’s age may present a problem. Age is often immaterial to the claim and therefore may not be captured. Medical malpractice claimants are third parties and cannot be forced to disclose their age. We also question the relevance of capturing and reporting the date of notice to the insuring entity and the county in which an incident occurred. Finally, we note that requiring insurers to report their “best estimate” of the apportionment between economic and non-economic damages, particularly with respect to jury verdicts, presents obvious problems.

We plan to participate on the Task Force’s January 22 call, and we hope that there will be an opportunity for continued discussion of these matters. Thank you for your time and consideration.

Sincerely,

/s/

Kenneth A. Stoller  
Senior Counsel

cc: Pamela K. Simpson  
Pamela M. Young