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From: Wickman, Al
Sent: Monday, October 20, 2008 11:40 AM
To: Barclay, Lee
Cc: Bieniek, Joe; Kabler, Brent
Subject: RE: medical professional liability closed claim reporting

I've looked at Brent's comments and mine are to be considered "on top" of his. As all of you know, I did not support the model in its current form, and I still think that it is headed for trouble. I believe that Brent agrees with me on some of those points. Having said that, I will try to be constructive here.

1. I agree with Brent's comments that the model leaves some wiggle room. The expansions necessary to respond to my criticisms, however, would represent taking a model that specifically seeks *not* to be able to relate various reports back to other reports from the same case, or to be able to identify specific cases, and doing just exactly the opposite. I think that would be more than one could reasonably justify given the current model. That is, I agree with Brent that you can collect additional tidbits and detail in order to fulfill what appears to be the intent of the law/model, but I don't think that you can take this as license to make the carte blanche additions and changes that would be necessary to address my criticisms. The tidbits and details would need to be consistent with the model's framework.

2. I agree with you and with Brent's comments. While I certainly agree with those that assert that the measures of economic versus non-economic damage will produce results of very questionable value, I simply don't see how you can take a law/model and not fulfill its explicit requirements.

3. I generally agree with you (Lee) and disagree with Brent, but I think that the problem here is a matter of Brent's misinterpretation of your intent. If an insurer fails to report a data element, or reports a data element that is either not valid or is not reasonable (which are two different conditions), then I don't believe that the regulator or anyone other than the insurer submitting the data should change that data. Having said that, my analyses can certainly go through the data that I have and make substitutions of this nature, as long as my analysis explains the nature of the substitutions that I'm making and the principles that I'm using to make them. In that fashion, someone looking at my analyses will understand what has been done.

The minor exception that I might put in here relates to states like Nebraska that might actually get involved in handling of claims. We get involved in most of the medical professional liability claims filed in our state, which means that some of the data will be ours to start with, and we may have knowledge of the eventual disposition of the cases that some of the participating insurers won't have. Thus, if we were implement something to collect the same data elements as the NAIC model and its implementation guidelines, we'd want to take advantage of our involvement in claims to have much better data quality than will probably be possible with the NAIC model.

4. Agree without comment, as did Brent.

5. I pretty much agree with Brent's criticism. There are all kinds of ways to report information, and a "portal" is only one way that it can be accomplished. With regard to the statement, I agree with the first sentence (as does Brent) and disagree with the second (which Brent also disagrees with). With the third sentence, while I certainly agree that paper reporting is not a best practice, I'm unsure as to what you mean by "coding of data" should not be

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considered a best practice. If you're saying what I think that you're saying, then I agree to an extent, but I also don't think that you can get away from it entirely. If I were to draft something here, I might say something like the following:

"The guideline should be consistent with sound data management practices and the NAIC's commitment to modernization. Paper reporting should be avoided as a required practice, versus something that may be allowed when circumstances dictate."

6. I tenuously agree with the statement, and respectfully submit that Brent's comments don't really quite disagree as much as it appears that he believes. The segmentation, "into buckets that are so small that they are useless for analysis" is something that would occur at the level of analysis and not at the level of data collection. To the extent that the guideline has any flexibility, its development should be cognizant of this consideration, but one must also recognize Brent's admonition that not every data element needs to have enough non-zero entries to develop specific conclusions, as sometimes different values of data elements will be combined.

On this count, if you replace item #5 with the item #5 that I have suggested, which references sound data management practices, then I think that you can just delete item #6. Remember, you're only doing this list of "principles" to help yourselves, and this isn't something that is going to go any further than the working group.

While I continue to feel that the law has serious flaws, it would still benefit Nebraska if states attempting to implement the model have the best possible set of implementation guidelines to use. I think that states are going to find it very difficult to move forward with this model; the least that the NAIC can do is to give them the best set of guidelines possible.

Good luck!

Alan Wickman

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