

Received via E-mail October 20, 2009
From Ken Stoller, American Insurance Association

Dear Mr. Bieniek,

I am writing on behalf of the American Insurance Association (AIA) regarding the NAIC's proposed Guideline for Implementation of Medical Professional Liability Closed Claim Reporting.

Section D. II deals with the public release of data. As you know, AIA has objected throughout the discussions of this subgroup to the public dissemination of closed claim data required to be submitted by insurers. Our objection is particularly heightened when it pertains to the release of individual-level data. We maintain that the insurance departments, as the data recipients, should undertake the greatest efforts to protect the confidentiality of the data. To the extent the data is required to be publicly released, however, we strongly believe that it must be aggregated.

The draft guidelines, on pg. 15, recognize the importance of "minimizing the probability that sensitive information will be disclosed," and note that "Of greatest concern to most states is what statisticians call 'disclosure risk,' or the risk that the data released could enable end-users to identify individuals or entities involved in a malpractice action." While these are important observations, we urge more from the guidelines. We respectfully submit that the guidelines should be amended to: (1) include the clear statement that states may choose not to permit the public release of data, in view of the concerns we have previously raised; and (2) indicate a clear preference for the aggregated data if a state does contemplate public release of data. It should be stated up front that this option is more protective in terms of confidentiality and thus preferred over any form of individual data release.

We look forward to a discussion of these matters on the next call.

Sincerely,

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