

9/11/06 The following list of questions was formulated to guide the Statistical Information Task Force as to the types of Medical Professional Liability Insurance (MPLI) data that should be recommended for inclusion in a coordinated system of MPLI Information Resources and/or collected and maintained in a MPLI Database for use in a complete and meaningful analysis of MPLI market conditions:		Type of Question: Simple (S), Complex (C)	Annual Statement Data	Statistical Plan Data	Comprehensive* Closed Claim Data	NPDB	New Data Sources - Error Reporting	Other New Data Sources
1. Medical errors and patient safety								
1.1	Which specialties, procedures, or medical conditions produce the most claims? Why?	S		X	X	X		X
	These data are very important, and can/are included in existing statistical plans. The problem lies in states not enforcing their existing statistical plan laws/rules and requiring insurers to report to a statistical agent.							
1.2	How prevalent are medical errors in relation to malpractice claims?	S			X	X	X	
	This question should be dropped. Injuries are easy to diagnose, but is not always clear when/if a medical error has actually occurred. There is too much judgment involved to produce reliable data.							
1.3	What is the distribution of claims among practitioners? Do they appear to occur randomly, or does a minority of providers account for a disproportionate share of claims costs?	S			X		X	
	These data are very important, but it is not clear that insurance regulators should be the one to collect them. States have agencies that regulate medical practitioners and facilities, and they should be making findings and publishing them. This question should be dropped.							
1.4	Can the data tell us anything about how to reduce medical errors?	C/S			X	X	X	
	This question can be answered by incorporating the NPDB codes into a closed claim report. This will require new closed claim reporting legislation in most states.							
1.5	Does the malpractice system deter medical errors?	C				X	X	
	This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
1.6	In the event of a medical misadventure, what factors impact claiming behavior?	C			X	X	X	
	This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
1.7	What are the causes of loss?	S			X	X	X	
	This question can be answered by incorporating the NPDB codes into a comprehensive closed claim report. This will require new closed claim reporting legislation in most states. If all entities are not required to report (admitted insurers, surplus lines insurers, self-insurers, RRG's) these data will have little value.							
1.8	Are there ways to use these data to prevent future losses?	C/S			X	X	X	
	Cause of loss data may be useful to prevent future losses if they are analyzed by medical practitioners or their regulatory bodies to develop best practices for medical care.							
2. Compensation								
2.1	How well does the medical malpractice system compensate injured parties?	C/S			X		X	
	This question should be dropped. Other sources of compensation would have to be considered, and their would have to be an accurate "roll-up" of compensation from all sources.							
2.2	How does compensation paid compare to incurred wage loss, medical costs, etc?	S			X			
	A proportional analysis can be made between known economic damages and total indemnity payments if collected in a statistical plan or under a closed claim reporting law. It will lead to inaccurate conclusions if payments are limited by the amount of available liability insurance and there is not an accurate roll up of compensation from all contributing insurers.							

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2.3	What factors influence the size of awards (injury severity, monetary loss, non-pecuniary damages, degree of culpability of practitioner, etc)?	C/S			X		X	
This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								
2.4	How would a cap on non-economic damages impact overall distribution of compensation among injured parties?	S			X		X	
This question should be dropped. There is no universal method of capping losses in state that have these laws, and often there are exceptions to the cap. We will have endless apples to oranges comparisons.								
3. Transaction costs (all plaintiff and defense investigatory and legal fees, and expenses)								
3.1	What are the "transaction costs" associated with adjudicating claims, for either the injured parties or providers/insurers?	S	X	X	X			
3.2	What are the significant components of transaction costs (attorney fees, expert witnesses, time away from patients, etc)?	S			X			X
3.3	How do transaction costs differ based on the method of resolution (negotiation, mediation, arbitration, medial review panel, trial, verdict, appeal)?	S			X			
Transactional costs are important data for the NAIC to collect.								
4. Public policy issues (non-insurance)								
4.1	What might be the likely impact of public policy proposals on the ability of the system to compensate injuries?	C/S	X	X	X	X	X	X
This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								
4.2	Is it possible to perform a cost-benefit analysis of such proposals, or assess the efficiency of competing proposals?	S	X	X	X	X	X	X
This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								
<i>Examples of non-insurance public policy issues :</i>								
4.3	Venue							
4.3.1	Where are most claims filed?	S		X	X			
These data are very important, and can be included in existing statistical plans. They would see to be of interest in rate-setting.								
4.3.2	What seems to govern the selection of venues (place of injury, claimant's place of residence, etc)?	C/S			X			
This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								

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4.3.3	Are there identifiable jurisdictions that are more “generous” or “stingy” than others with respect to awards for similar injuries?	C/S		X	X			
	Comprehensive closed claim data will be needed. Admitted insurers make up a limited piece of the pie (because they don't include large self-insurers like hospitals). Tort laws vary by state, so "jurisdiction" this is complex.							
4.3.4	What might be the impact of reforms related to venue?	S		X	X			
4.4	Collateral source rule	S	X	X	X			X
4.5	Charitable or other immunity (trauma care, non-treating or non-attending partners)	S	X	X	X			X
4.6	Joint and Several Liability							
4.6.1	Are facilities a “deep pocket” because of joint and several liability?	S		X	X			X
	Comprehensive closed claim data will be needed. Admitted insurers make up a limited piece of the pie (because they include large self-insurers like hospitals). There will also have to be a way to accurately link up payments from multiple sources. This is complex - not simple. Data quality will be a problem.							
4.6.2	Does the malpractice system reasonably and non-arbitrarily apportion “fault” and liability?	C/S			X		X	X
	This question should be dropped. It would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
4.7	Gatekeeping							
4.7.1	Is there a fair and workable way to screen claims prior to adjudication?	C/S						X
	This question cannot be answered by insurance statistics and should be dropped.							
4.7.2	How can a gatekeeper screen out non-meritorious claims?	C/S						X
	This question cannot be answered by insurance statistics and should be dropped.							
4.8	Adjudication reforms (alternative courts, dispute resolution)							
4.8.1	Can alternative adjudication methods offer an improvement to the current system?	C/S		X	X		X	X
	This question should be dropped (unless we can agree on a list of "improvements"). Now it would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
4.8.2	Can alternative methods deliver fairer compensation, lower transaction costs, etc?	C/S	X	X	X		X	X
	This question should be dropped (unless we can agree on a list of "alternatives"). Now it would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
4.9	Access to care							
4.9.1	Is medical care in all specialties available in all areas? What are the determining factors regarding the availability of medical care?	C		X				X
	This question should be dropped and regulatory bodies that license practitioners should provide these details. A statistical plan can provide exposures by territory for admitted carriers. Hospitals are often self-insured and operate in the surplus lines market. Insurance statistical data cannot answer this question.							
4.9.2	To what extent are medical malpractice risks considered by providers in location decisions?	C/S						X
	This question cannot be answered by insurance statistics and should be dropped.							
4.9.3	To what extent are MPLI premiums considered by providers in location decisions?	C/S						X
	This question cannot be answered by insurance statistics and should be dropped.							

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4.9.4	To what extent are MPLI premiums different by location?	S		X				X
	The statistical plan can only provide limited data (for risks eligible for the admitted market). Since the insurance statistics cannot accurately answer this question, it should be dropped.							
4.9.5	What are the premiums for OB/GYN's and family doctors who deliver babies?	S		X				X
	The statistical plan can only provide limited data (average premiums for risks eligible for the admitted market). Since the insurance statistics cannot accurately answer this question, it should be dropped.							
4.9.6	Is the cost of MPLI driving these doctors out of this business? Other reasons?	C/S		X				X
	This question cannot be answered by insurance statistics and should be dropped.							
4.9.7	Have providers actually left the system? (Why? MPLI cost? MPLI tail coverage considerations? Income? Other reasons?)	C/S						X
	This question cannot be answered by insurance statistics and should be dropped.							
5. Medical Professional Liability Insurance (MPLI) market structure and performance								
5.1	Do specific sub-lines exhibit market irregularities or departures from the ideal of a competitive market?	S	X					X
	Annual statement data cannot answer this question.							
5.2	How severe are affordability and availability problems in specific provider specialties?	C/S		X				X
	"Affordability" will have to be defined - and it is a subjective term that does not lend itself to statistical analysis. Insurance is almost always available for a price in the surplus lines market.							
5.3	Why and how are issues different with hospitals, nursing homes, etc?	C/S	X	X	X			X
	This question should be dropped (unless we can agree on a list of "issues"). Now it would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.							
5.4	Does the "underwriting cycle" exist? (If so, what might account for it, and what strategies might ameliorate its effects?)	C/S	X	X				
	Statistical plan data will also be needed to identify trends.							
5.5	Do high policy limits attract high dollar claims?	S			X			X
	This question should be dropped. The more relevant question is joint & several liability. With serious claims, the tendency is to name more defendants.							
5.6	Availability							
5.6.1	Who writes MPLI (admitted and surplus lines)? Who will insure certain classes of risk?	S	X					X
	RRG's are becoming more important player in the market. We can't answer the classes of risk question with insurance statistical data, and that element should be dropped.							
5.6.2	What percentage of the market is comprised of admitted, surplus lines, RRG's and self-insurance programs, and how has that changed over time?	S	X					X
5.6.3	How many doctors are insured by admitted, RRG's surplus lines and self-insurance program? How does this compare to population trends?	S	X					X
	These data are not available in the annual statement. We will need a source of exposure data, and it is likely RRG's will not cooperate. This data question should be dropped unless a change to the RRG Act is feasible.							

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5.6.4	What impact do "record only" claim reports have on a providers' experience and rating?	S		X				X
NAIC should have a uniform definition of claims included in the statistical handbook.								
5.6.5	What rating factors aside from medical specialty are common?	S						X
States should already be able to explain this to policymakers from existing filings. The answer may be requiring insurer to file their rating plans in all states. This is not a workplan item.								
5.6.6	How do factors such as territory rating impact rates?	S		X				X
States should already be able to explain this to policymakers from existing filings. The answer may be requiring insurer to file their rating plans in all states. This is not a workplan item.								
5.7	Affordability							
5.7.1	Premium and loss data for admitted, RRG's surplus lines and self-insurance programs.	S	X	X				X
Admitted insurer data only is available. Enforcement of existing statistical plans will answer this question in a limited way.								
5.7.2	What are the premium trends and loss trends, and what do they look like compared to inflation?	S	X	X				X
Admitted insurer data only is available. Enforcement/augmenting existing statistical plans will answer this question in a limited way.								
5.7.3	What are the components of loss payments (types and costs): Of damage payments compensatory damages (economic loss: medical, wage loss, non-economic loss); punitive damages, plaintiff attorney fees) Of defense payments (investigatory expenses, attorney fees, expert witnesses, court costs)	S		X	X	X		X
The only way to collect accurate data on payment components is through a comprehensive closed claim reporting law.								
5.7.4	What are current and historical reinsurance costs, and how do they drive premium increases?	S	X					X
Annual statement data will not accurately answer this question, because it does not have exposure data.								
5.7.5	Do jury awards drive costs? How? Why?	C/S	X		X	X		X
Annual statement data will not accurately answer this question, and neither will any other available data. What we can say with certainty is that very few claims result in jury verdicts, and we can use a closed claim database to identify settlement types. Those of us that work with statistics for a living will find it hard to say a small number of claims influence the universe of medical malpractice settlements.								
5.7.6	Which specialties, procedures or medical conditions have the most frequent or severe claims?	S		X	X	X		X
Augmenting the NAIC Med Mal Statistical Plan with NPDB severity classes will answer this question.								
5.7.7	How does the doctrine of joint and several liability impact the naming of defendants and the assigning of culpability?	C/S			X	X	X	X
This question should be dropped. It will be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								

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5.8	Rates							
5.8.1	What factors have contributed to rate increases? What is the role of loss costs, transaction costs, investment returns, or other trends?	S	X	X				X
These data (for admitted insurers) are can/are included in existing statistical plan and annual statement data. NAIC needs to enforce reporting								
5.8.2	What are trends in claiming rates and loss severities? What factors account for trends?	C/S		X	X	X		X
These data (for admitted insurers) are can/are included in existing statistical plan and annual statement data. NAIC needs to enforce reporting								
5.8.3	What factors govern the size of indemnity awards?	C/S			X	X	X	X
This question should be dropped (unless we can agree on a list of "factors"). Now it would be next to impossible determine which data elements and develop the related data definitions to produce reliable information.								
5.8.4	Do rates reflect the unique features of each state market, or do rates reflect more national-level factors?	C/S	X	X	X	X		X
This question cannot be answered by insurance statistics and should be dropped.								
5.8.5	Can enhancements to data collection improve ratemaking?	C/S		X				X
Based on all the data mining that occurs in personal lines, we already know they answer to this question.								
5.8.6	Can (or do) insurers adopt methods to reduce claims costs among their insureds?	C/S			X		X	X
This question cannot be answered by insurance statistics and should be dropped.								
5.8.7	Are such methods effective?	C			X		X	X
This question cannot be answered by insurance statistics and should be dropped.								
5.8.8	How would a cap on non-economic damages impact overall MPLI loss costs?	S	X	X	X	X		
This question should be dropped. There is no universal method of capping losses in state that have these laws, and often there are exceptions to the cap. We will have endless apples to oranges comparisons.								
5.9	Residual markets (includes Patient Compensation Funds, Provider Premium Assistance Funds, etc.							
5.9.1	How well might a residual market mechanism address affordability/availability issues?	C/S		X				X
This question cannot be answered by insurance statistics and should be dropped.								
5.9.2	How could a residual markets mechanism be paid for?	C						X
This question cannot be answered by insurance statistics and should be dropped.								
6. Closed Claim Information								
6.1	How many claims lack "legal merit"?	C			X	X	X	X
6.2	How many claims are made, investigated and denied and at what cost?	S		X	X		X	X
6.3	Are "record only" claims to be reported? (Definitely need information regarding LAE on \$0 paid claims.)	C/S		X	X	X		X
The NAIC need to develop a universal definition of a "claim."								
6.4	How can the completeness and accuracy of closed claim reporting be judged?	C			X	X		X
6.5	How can compliance with closed claim reporting requirements best be enforced? (admitted carriers, surplus lines, self-insurers, etc.)	C			X			X
6.6	What is the most efficient means of collecting and distributing data?	C			X	X		X
6.7	Given privacy concerns, which interested parties should have access to which data elements?	C			X	X		X

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6.8	On what basis was the claim closed? (Record only? Resolved as withdrawn as no liability? No recoverable damages? Settled as question of liability and or damages? Finding by review panel arbitrator, or court of liability and settled on damages. Award of damages?)	S			X	X		X
6.9	How was the claim resolved? (negotiation, mediation, arbitration, review panel, trial, appeal, etc.)	S			X	X		X
6.1	How was the claim paid? (lump sum? Structured settlement? Open-ended?	S			X	X		X
6.11	If structured settlement or open-ended, how is the claim reported?	S			X	X		X
6.12	Do the reports provide a complete picture of the claim in the case of multiple plaintiffs or multiple defendants?	C/S			X	X		X
6.13	Can patterns between different geographic areas be determined?	S			X	X		X
6.14	Can comparisons be made among states? (How to account for differences in tort systems, rates, residual market mechanisms, etc?)	S	X	X	X	X	X	X

These, and many more questions can be answered with a comprehensive closed claim reporting law.

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