

To: Lee Barclay and members of the Statistical Information Task Force
From: Brent Kabler, Missouri
Date: 9/18/2007

Re: Draft of letter to the C committee re confidentiality issues and medical malpractice data.

Suggested revision, first paragraph:

“During the model law development process, however, the Task Force has encountered one issue on which it would appreciate the guidance of its parent committee: whether the model law should include a provision that ensures that individual closed claim data will be kept confidential by the state insurance department that collects the data required by the model law. If so, the Task Force requests guidance regarding the level of confidentiality any provision should confer upon the data. Once this issue is resolved...

Suggested Revision: Insert the following immediate prior to “As the Property & Casualty Insurance (C) Committee considers this request for guidance...” in the **current draft**.

There is a continuum of available options with respect to confidentiality:

- 1. All data is available to the public.**
- 2. All data is subject to release under certain restricted conditions, such as to applicants submitting a research proposal and signing a confidentiality agreement.**
- 3. Only individual records that have been “anonymized” may be released. Data can be anonymized to varying degrees by**
 - a. removing all data fields that identify the specific parties to a claim;**
 - b. removing geographic references, such as those that identify the county in which an injury occurred;**
 - c. generalizing data elements. For example, the date in which an injury occurred could be recoded to specify only the year of injury;**
 - d. calculating necessary items of interest in lieu of releasing specific data fields. For example, rather than releasing the year of injury and the year of closure, the number of years to close a file could be released.**
- 4. All data except in summary or aggregate form is confidential. For example, a DOI could release reports summarizing the number of claims that were filed during the last three years in a county, the number of claims that were closed, and average indemnity of those claims.**

The Property & Casualty Insurance (C) Committee should consider the level of specificity that might strike an appropriate balance between public policy purposes while preserving confidentiality interests. In considering this request for guidance, the Task Force suggests that the Committee consider the following thought-provoking questions:

- What are the benefits of making data accessible to researchers, academics, or other interested parties? For each of the degrees of confidentiality outlined on the continuum above, what is the risk of harm to individual providers and facilities? How likely is it that their privacy would be compromised?
- Can state insurance departments fulfill the analytical function that would otherwise be performed by multiple independent researchers? Should they?
- Given the strong opposition of the insurance industry and the medical community to public access to individual claim data, how would various confidentiality provisions, or the lack of such a provision, affect the model law's likelihood of passing in a state?
- What kind of confidentiality provision, if any would result in the strongest possible support for the model law by the Executive Committee and the NAIC membership as a whole?

The Task Force has thoroughly discussed these issues, and considered extensive comments from a variety of interested parties. We encourage you to read these comments, available on the Statistical Information Task force page of the NAIC Web site at http://www.naic.org/committees_c_sitf.htm

In order to meet the timelines ...