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NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

TO: NAIC Members

FROM: José Montemayor  
Chair, P&C Committee

DATE: October 25, 2004

SUBJECT: NAIC's Medical Malpractice Study

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The NAIC's Property and Casualty Insurance (C) Committee undertook an extensive study of distressed insurance markets in March of 2003. The charge was carried out by the Market Conditions Working Group. NAIC staff, particularly NAIC Economist Davin Cermak and Research Director Eric Nordman, performed the empirical work. Ken McDaniel of my staff assisted them with the research effort at the state regulatory level.

The working group and the committee spent many long hours discussing and debating the study to determine what the data revealed about the various medical malpractice markets. Ultimately, the study concluded that underwriting losses were the primary driver of current premium levels. All other factors came a distant second or third as premium drivers. In addition, the group also concluded there is insufficient data to conclusively determine what is wrong, or right, with the various state markets. This is in large part because there is no appropriate statistical information collected to make these determinations. Thus the study recommends that the NAIC take steps to assure that appropriate data is collected in the future.

The report is intended as an aid in identifying the different measures that may be available for consideration by lawmakers and regulators in response to a market crisis. The report outlines the current issues surrounding the current medical malpractice market and provides a review of the financial condition of the markets, both nationally and by-state. There are many states currently considering various measures to address problems related to the affordability and/or availability of medical malpractice coverage, which are also discussed in-depth.

The report was not developed without controversy. Early renditions of it recommended specific measures. These are not in the final report, but instead have been replaced by a list of measures that states have tried in the past. There is no comment about whether these measures are good or bad and no encouragement to implement a specific type of solution. The list has three components. It lists several possible tort reforms, several other types of reforms such as patient safety measures and patient compensation funds and lists market assistance plans under other related measures. Our hope is that the report is useful to those policymakers and regulators reviewing the available options to deal with the current medical malpractice market crisis.

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