

MEDICAL PROFESSIONAL LIABILITY CLOSED CLAIM REPORTING MODEL LAW

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Drafting Introductory Note: This model law pertains to the collection of data necessary to accomplish the purpose stated in Section 1. It is not intended to discourage states from collecting additional data for other purposes.

Section 1. Statement of Purpose

This Act is intended to ensure the availability of closed claim data necessary for thorough analysis and understanding of issues associated with medical professional liability claims, in order to support the establishment and maintenance of sound public policy.

Section 2. Definitions

As used in this Act:

- A. “Claim” means:
 - (1) A demand for monetary damages for injury or death caused by medical malpractice; or
 - (2) A voluntary indemnity payment for injury or death caused by medical malpractice.
- B. “Claimant” means a person, including a decedent’s estate, who is seeking or has sought monetary damages for injury or death caused by medical malpractice.
- C. “Closed claim” means a claim that has been settled or otherwise disposed of by the insuring entity, self-insurer, facility or provider. A claim may be closed with or without an indemnity payment to a claimant.
- D. “Commissioner” means the commissioner of insurance.
- E. “Companion claims” means separate claims involving the same incident of medical malpractice made against other providers or facilities.
- F. “Economic damages” means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services and loss of business or employment opportunities.
- G. “Health care facility” or “facility” means a clinic, diagnostic center, hospital, laboratory, mental health center, nursing home, office, surgical facility, treatment facility or similar place where a health care provider provides health care to patients.

- H. “Health care provider” or “provider” means:
- (1) A person licensed to provide health care or related services, including an acupuncturist, doctor of medicine or osteopathy, a dentist, a nurse, an optometrist, a podiatric physician and surgeon, a chiropractor, a physical therapist, a psychologist, a pharmacist, an optician, a physician’s assistant, a midwife, an osteopathic physician’s assistant, a nurse practitioner or a physician’s trained mobile intensive care paramedic. If the person is deceased, this includes his or her estate or personal representative; or
 - (2) An employee or agent of a person described in paragraph (1) of this subsection, acting in the course and scope of his or her employment. If the employee or agent is deceased, this includes his or her estate or personal representative.
- I. “Insuring entity” means:
- (1) An authorized insurer;
 - (2) A captive insurer;
 - (3) A joint underwriting association;
 - (4) A patient compensation fund;
 - (5) A risk retention group; or
 - (6) An unauthorized insurer that provides surplus lines coverage.
- J. “Medical malpractice” means an actual or alleged negligent act, error, or omission in providing or failing to provide health care services.
- K. “Noneconomic damages” means subjective, nonmonetary losses, including pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, humiliation and injury to reputation, and destruction of the parent-child relationship.
- L. “Self-insurer” means any health care provider, facility, or other individual or entity that assumes operational or financial risk for claims of medical professional liability.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term “commissioner” appears.

Drafting Note: If some of these terms are already defined elsewhere in this State’s statutes, references to those statutes may be substituted for the definitions above. If some types of insuring entities are defined elsewhere in this State’s statutes, those definitions may be cited.

Section 3. Applicability and Scope

This Act shall apply to all medical professional liability claims in this State, regardless of whether or how they are covered by medical professional liability insurance.

Section 4. Reporting Requirements

- A. For claims closed on or after January 1, [insert year]:
- (1) Every insuring entity or self-insurer that provides medical professional liability insurance to any facility or provider in this State must report each medical professional liability closed claim to the commissioner.

- (2) A closed claim that is covered under a primary policy and one or more excess policies shall be reported only by the insuring entity that issued the primary policy. The insuring entity that issued the primary policy shall report the total amount, if any, paid with respect to the closed claim, including any amount paid under an excess policy, any amount paid by the facility or provider, and any amount paid by any other person on behalf of the facility or provider.
- (3) If a claim is not covered by an insuring entity or self-insurer, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties. Instances in which a claim may not be covered by an insuring entity or self-insurer include situations in which:
 - (a) The facility or provider did not buy insurance or maintained a self-insured retention that was larger than the final judgment or settlement;
 - (b) The claim was denied by an insuring entity or self-insurer because it did not fall within the scope of the insurance coverage agreement; or
 - (c) The annual aggregate coverage limits had been exhausted by other claim payments.
- (4) If a claim is covered by an insuring entity or self-insurer that fails to report the claim to the commissioner, the facility or provider named in the claim must report it to the commissioner after a final claim disposition has occurred due to a court proceeding or a settlement by the parties.
 - (a) If a facility or provider is insured by a risk retention group and the risk retention group refuses to report closed claims and asserts that the federal liability risk retention act (95 Stat. 949; 15 U.S.C. Sec. 3901 et seq.) preempts state law, the facility or provider must report all data required by this Act on behalf of the risk retention group.
 - (b) If a facility or provider is insured by an unauthorized insurer and the unauthorized insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this Act on behalf of the unauthorized insurer.
 - (c) If a facility or provider is insured by a captive insurer and the captive insurer refuses to report closed claims and asserts a federal exemption or other jurisdictional preemption, the facility or provider must report all data required by this Act on behalf of the captive insurer.

Drafting Note: When subsection A(4) applies, the State needs to consider inserting wording regarding who is responsible for notification to facilities and providers. Notification by either the domiciliary state regulator or the insurer must be provided in advance to insureds that they must produce all data required by this act upon behalf of the insurer.

- B. Beginning in [insert year], reports required under subsection A of this section must be filed by March 1. These reports must include data for all claims closed in the preceding calendar year and any adjustments to data reported in prior years.
- C. The commissioner may adopt rules that require insuring entities, self-insurers, facilities and providers to submit all required closed claim data electronically.

Drafting Note: Many State insurance codes specify penalties for failure to timely file statutorily required reports or for submitting materially incorrect data. Each State should determine the applicability of such penalties to this Act. If it is determined that the State does not possess an adequate means to enforce this Act, the State may wish to consider inserting additional enforcement wording in this section.

Drafting Note: The year inserted in subsection B should be the year following the year inserted in subsection A.

Section 5. Required Data Elements

Reports required under section 4 of this Act must contain the following information in a format and coding protocol prescribed by the commissioner. To the greatest extent possible while still fulfilling the purposes of this Act, the format and coding protocol shall be consistent with the format and coding protocol for data reported to the National Practitioner Data Bank.

- A. Claim and incident identifiers, including:
 - (1) A claim identifier assigned to the claim by the insuring entity, self-insurer, facility or provider; and
 - (2) An incident identifier if companion claims have been made by a claimant;
- B. The policy limits of the medical professional liability insurance policy covering the claim;
- C. The medical specialty of the provider who was primarily responsible for the medical malpractice incident that led to the claim;
- D. The type of health care facility where the medical malpractice incident occurred;
- E. The primary location within a facility where the medical malpractice incident occurred;
- F. The geographic location, by city and county, where the medical malpractice incident occurred;
- G. The injured person's sex and age on the incident date;
- H. The severity of malpractice injury using the National Practitioner Data Bank severity scale;
- I. The dates of:
 - (1) The earliest act or omission by the defendant that was the proximate cause of the claim;
 - (2) Notice to the insuring entity, self-insurer, facility or provider;
 - (3) Suit, if a suit was filed;
 - (4) Final indemnity payment, if any; and
 - (5) Final action by the insuring entity, self-insurer, facility or provider to close the claim;
- J. Settlement information that identifies the timing and final method of claim disposition, including:
 - (1) Claims settled by the parties;
 - (2) Claims disposed of by a court, including the date disposed;
 - (3) Claims disposed of by alternative dispute resolution, such as arbitration, mediation, private trial and other common dispute resolution methods; and
 - (4) Whether the settlement occurred before or after trial, if a trial occurred;

- K. Specific information about the indemnity payments and defense and cost containment expenses, including:
- (1) For claims disposed of by a court that result in a verdict or judgment that itemizes damages:
 - (a) The indemnity payment made on behalf of the defendant;
 - (b) Economic damages;
 - (c) Non-economic damages;
 - (d) Punitive damages, if applicable; and
 - (e) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses; and
 - (2) For claims that do not result in a verdict or judgment that itemizes damages:
 - (a) The total amount of the settlement on behalf of the defendant;
 - (b) The insuring entity's or self-insurer's best estimate of economic damages included in the settlement;
 - (c) The insuring entity's or self-insurer's best estimate of noneconomic damages included in the settlement; and
 - (d) Defense and cost containment expenses, including court costs, attorneys' fees, and costs of expert witnesses;
- L. The reason for the medical professional liability claim. The reporting entity must use the same allegation group and specific allegation codes that are used for mandatory reporting to the National Practitioner Data Bank; and
- M. Any other closed claim data the commissioner determines to be necessary to accomplish the purpose of this Act and requires by adopting a rule.

Section 6. Confidentiality of Data

Drafting Note: Each state should determine the extent to which the data collected may be made available to other parties and insert wording consistent with that determination. Options include:

- All data are available to the public.
- All data are subject to release under certain restricted conditions, such as to applicants submitting a research proposal and signing a confidentiality agreement.
- Only individual records that have been "anonymized" may be released. For example, the data can be anonymized to varying degrees by removing elements that may permit identification of the parties to a case, by removing place references such as counties, and by limiting the representation of dates to the corresponding year.
- All data are confidential except data released in summary or aggregate form. Data would be aggregated to a high enough level that readers would not be able to deduce information on any particular provider, facility, claimant, or claim.

Section 7. Authority to Adopt Rules

The commissioner shall adopt any rules needed for implementing the provisions of this Act.

Section 8. Effective Date

This Act shall take effect on [insert date].

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

2008 Proc. 3rd Quarter 3-323 to 3-330 (adopted). (Comment Letters-8-144 to 8-169).

MEDICAL PROFESSIONAL LIABILITY CLOSED CLAIM REPORTING LAW

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-1742 (1982/2002); § 12-570 (1986/2005); Circular Letter 7-29-82 (1982).
Arkansas	NO CURRENT ACTIVITY	
California	NO CURRENT ACTIVITY	
Colorado		COLO. REV. STAT. § 10-1-120 (2003); BULLETIN B-5.14.
Connecticut		CONN. GEN. STAT. § 38a-395 (1958/2007); Ins Order 7-27-2006 (2006).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. STAT. § 627.912 (1974/2009); FLA. ADMIN. CODE ANN. r. 690-171.003 (1983/1999); BULLETIN 84-255 (1984); BULLETIN 87-213 (1987); Memorandum 97-007 (1997); Memorandum 99-105 (1999).
Georgia	NO CURRENT ACTIVITY	
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	

MEDICAL PROFESSIONAL LIABILITY CLOSED CLAIM REPORTING LAW

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Idaho	NO CURRENT ACTIVITY	
Illinois		ILL. ADMIN. CODE tit. 50, § 4203.230 (2007/2013); BULLETIN 2010-6; ILL. ADMIN. CODE tit. 50, § 928.10 to ILL. ADMIN. CODE tit. 50, § 928.Exhibit B & E (2012).
Indiana	NO CURRENT ACTIVITY	
Iowa	NO CURRENT ACTIVITY	
Kansas		KAN. STAT. ANN. § 40-1126 (1975/1996).
Kentucky		KY. REV. STAT. ANN. §§ 304.40 to 304.310 (1976/2010).
Louisiana	NO CURRENT ACTIVITY	
Maine		ME. REV. STAT. ANN. tit. 24 §§ 2601 to 2608 (1977/1997); BULLETIN 283 (1998).
Maryland		MD. CODE ANN., INS. § 4-401 (2014); § 4-405 (2009); MD. CODE REGS. 31.08.10.03 to 31.08.10.05; BULLETIN 9-2009 (2009); BULLETIN 2010-11 (2010).
Massachusetts	NO CURRENT ACTIVITY	
Michigan		MICH. COMP. LAWS § 500.2477 (1986/1995); BULLETIN 2012-12-INS (2012).
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri		MO. ANN. STAT. §§ 383.105 to 383.106 (1976/2006); § 383.110 (1976/2006).
Montana	NO CURRENT ACTIVITY	
Nebraska		172 NEB. ADMIN. CODE § 5-003 (1995/2006).
Nevada		NEV. REV. STAT §§ 690B.260 (1997/2007); 690B.360 (2003); BULLETIN 12-006.
New Hampshire		N.H. CODE ADMIN. R. ANN. 3801.01 to 3801.07 (2006/2014).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New Jersey		N.J. STAT. ANN. § 17:30D-17 (1983/2006); N.J. ADMIN. CODE §§ 11:1-7.1 to 11:1-7.5 (2005/2009); §§ 11:27-11.1 to 11:27-11.6 (2009).
New Mexico	NO CURRENT ACTIVITY	
New York		N.Y. INS. LAW § 315 (1984/2000); Circular Letter 2010-6 (2010).
North Carolina	NO CURRENT ACTIVITY	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. § 3929.302 (2004); OHIO ADMIN. CODE 3901-1-64 (2005/2014).
Oklahoma	OKLA. STAT. tit. 36 §§ 6810 to 6820 (2009).	OKLA. STAT. tit. 76 § 17 (1976/1979); BULLETIN 2009-01 (2009); BULLETIN 2008-02 (2008); BULLETIN 2005-02 (2005); BULLETIN 3-26-2010 (2010); BULLETIN 2011-03 (2011); BULLETIN PC 2013-09 (2013); BULLETIN PC 2013-09 (#3).
Oregon		OR. REV. STAT. § 742.400 (2007/2013)
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	NO CURRENT ACTIVITY	
South Dakota		BULLETIN 2009-4 (2009).
Tennessee	TENN. COMP. R. REGS. 0780-1-84-.01 to 0780-1-84-.10 (2008/2009) (portions of model).	TENN. CODE ANN. § 56-3-111 (1979/2004); § 56-54-101 (2008); § 29-26-121 (2009).
Texas		28 TEX. ADMIN. CODE § 5.9201 (1988); BULLETIN B-0029-07 (2007); BULLETIN B-0028-09 (2009); BULLETIN B-0041-09 (2009); BULLETIN B-0024-12 (2012).
Utah	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Vermont		VT. STAT. ANN. tit. 8, § 3561 (2009) (authority to adopt model).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. § 38.2-2228.2 (2005).
Washington		WASH. REV. CODE § 7.70.140 (2006); §§ 48.140.020 to 48.140.070 (2006/2007); WASH. ADMIN. CODE 284-24C-020 to 284-24C-050 (2006/2013); 284-24D-040 (2007).
West Virginia		W. VA. CODE ANN. §§ 33-20B-6 to 33-20B-8 (1986/2001); W. VA. CODE R. §§ 114-22-5 (1988).
Wisconsin		WIS. STAT. § 655.45 (1985/2009); WIS. ADMIN. CODE § Ins 7.06 (1992).
Wyoming	NO CURRENT ACTIVITY	

MEDICAL PROFESSIONAL LIABILITY CLOSED CLAIM REPORTING MODEL LAW

Proceedings Citations

Cited to the Proceedings of the NAIC

The Statistical Information (C) Task Force discussed a draft Medical Malpractice Closed Claim Reporting Model Law. An interested party commented that it was encouraging that the Task Force was taking on the initiative. **2006 Proc. 4th Quarter 931 to 932.**

A regulator provided an overview of the draft model law. The intent of the model was to collect closed claim data. The Task Force discussed several issues and planned to accept comments at some point in the future. **2006 Proc. 4th Quarter 931 to 932.**

The Statistical Information (C) Task Force discussed comments on an early draft of the proposed model law. **2007 Proc. 1st Quarter 605.**

The Statistical Information (C) Task Force discussed the Request for Model Law Development for the Medical Malpractice Closed Claim Reporting Model Law. There was some discussion on whether some changes to the request form should be made regarding the inclusion or mention of the surplus lines bill pending in Congress and of the 1986 federal Liability Risk Retention Act. The Task Force approved the request form. **2007 Proc. 2nd Quarter 424 to 425.**

The Statistical (C) Task Force adopted the proposed model law. **2008 Proc. 1st Quarter 8-92.**

The Statistical Information (C) Task Force reported Medical Professional Liability Closed Claim Reporting Model Law was modified and then adopted by the Property and Casualty Insurance (C) Committee at the NAIC Spring National Meeting. A regulator said the Committee added two drafting notes to the model law. Another regulator said one was an introductory note regarding collection of additional data (such as the names of doctors) with a purpose of not discouraging a state from collecting additional needed data for the state's purposes. **2008 Proc. 2nd Quarter 8 to 47.**

A commissioner advised that the Medical Professional Liability Closed Claim Reporting Model Law was presented to the Executive (EX) Committee June 1, 2008. At the request of a member, consideration of the model was delayed to allow the member to submit a comment letter on the very narrow issue of the model's treatment of captive insurers. **2008 Proc. 2nd Quarter 2-11, 3-5 to 3-6, 8-4.**

The Property and Casualty (C) Committee discussed the history of the development of the model during a conference call held on August 25, 2008. **2008 Proc. 3rd Quarter 8-141 to 8-144.**

The Plenary adopted this new model by a two-thirds vote of the membership. This model law was drafted in response to the need for states, both individually and collectively, to have a better system of collecting information on closed claims in order to assist public policymakers addressing the availability and affordability of medical malpractice insurance. **2008 Proc. 3rd Quarter 3-6.**

Section 1. Statement of Purpose

Section 2. Definitions

The Task Force changed the references throughout the model from "Medical Malpractice" to "Medical Professional Liability." **2008 Proc. 1st Quarter 8-92.** The Task Force changed the definition of a "health care provider" by replacing ". . . a physician, a surgeon, an osteopathic physician, . . ." with ". . . a doctor of medicine or osteopathy, . . ." **2008 Proc. 1st Quarter 8-92.**

Section 3. Applicability and Scope

Section 4. Reporting Requirements

The Task Force discussed objections to the inclusion of surplus lines and risk retention group reporting. **2007 Proc. 3rd Quarter 543.**

MEDICAL PROFESSIONAL LIABILITY CLOSED CLAIM REPORTING MODEL LAW

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4 (cont.)

The Task Force added additional specificity to the dates and claim amounts to be reported, including notation that the amounts paid would be those paid “on behalf of the defendant.” **2008 Proc. 1st Quarter 8-92.**

The Task Force removed the item “[I]f there is more than one defendant, the total indemnity paid by or on behalf of this facility or provider” from the list of reporting requirements for indemnity payments and defense and cost containment expenses. **2008 Proc. 1st Quarter 8-92.**

A regulator made a motion to amend the language of Subsection A(4). This motion was adopted with the inclusion of a drafting note. **2008 Proc. 3rd Quarter 8-143.**

Section 5. Required Data Elements

The Task Force modified language in Subsection L to be consistent with the wording used by the National Practitioner Data Bank. **2007 Proc. 3rd Quarter 543.**

Section 6. Confidentiality of Data

The Task Force discussed benefits and potential drawbacks in making the medical malpractice data as publicly available as possible. **2007 Proc. 2nd Quarter 449 to 450.**

The Task Force discussed a draft letter to the Property and Casualty Insurance (C) Committee related to confidentiality provisions. The Task Force was seeking guidance on confidentiality of individual claim data that would be collected by a state adopting the model law. After discussion, the Task Force approved the letter. **2007 Proc. 3rd Quarter 539.**

A regulator said that the Task Force had received numerous comments from interested parties but would not discuss the issue of confidentiality because that issue would be handled by the Property and Casualty Insurance (C) Committee. **2008 Proc. 1st Quarter 8-92.**

A regulator led the discussion regarding the confidentiality provisions of the model. A commissioner made a motion that each jurisdiction should be able to insert their own particular confidentiality provisions. An interested party indicated the confidentiality wording should be the same in a draft model pursuant to the new model law development procedures. Allowing states to insert their own confidentiality provisions indicates the document should be a guideline and not a model law. A commissioner indicated that the motion as proposed would still meet the requirements of the model law process for consistency since each jurisdiction will enact the model uniformly and collect similar data which is necessary to the purpose. After much discussion, motion was adopted. **2008 Proc. 1st Quarter 8-4 to 8-5.**

Section 7. Authority to Adopt Rules

Section 8. Effective Date

Chronological Summary of Action

2008 Proc. 3rd Quarter 3-323 to 3-330 (adopted). (Comment Letters-8-144 to 8-169).