



OFFICE OF
INSURANCE COMMISSIONER

August 4, 2008

TO: Insurance Commissioner James Donelon
Louisiana Department of Insurance

FROM: Insurance Commissioner Mike Kreidler *MK*

Thank you for contacting me about the concerns you've been hearing from the surplus lines brokers regarding HR 1065, the "Nonadmitted and Reinsurance Reform Act of 2007." In particular, you appear to be hearing opposition to the added language requiring the surplus line insurer to report medical malpractice data to the home state of the insured medical professional. The brokers appear to be under the incorrect impression that somehow this addition would require them to report the data. This is simply not correct – and in fact, the nature of the closed claim data is such that it would be impossible for a broker to report the information.

By way of background, the NAIC staff – in consultation with Washington State and other NAIC member states – have suggested the following language be added to HR 1065:

MEDICAL PROFESSIONAL LIABILITY INSURANCE DATA REPORTING – The home state of the insured may require a surplus lines insurer to report medical professional liability insurance data to the home State of the insured or to a statistical agent of that State, in conformance with a standard developed by the NAIC. (emphasis added)

As you can see, this addition will preserve the right of a home state of the medical professional to collect important data about medical malpractice claims within its borders from the insurer (not the broker). It also assures that uniformity in reporting is preserved, by requiring that it be based on standards developed through the NAIC.

I've been very concerned about surplus lines insurers being preempted from data reporting requirements from the very beginning of this federal legislation – and have spoken out consistently about the need to preserve the state's rights to collect important closed claim data from the non-admitted market. I've now gone through two hard market cycles and attempts to pass "tort reform" both in the late '80s as a legislator and in the mid-2000s as insurance commissioner. In each instance, public policymakers were missing important information about the true nature of the medical malpractice claims environment. I don't want to be in the same position when the next inevitable hard market hits.

To address this lack of meaningful data, I worked closely with the Governor and Legislature to assure I had the authority to collect important data from all companies involved in medical malpractice insurance. In 2006, the Washington State Legislature passed a Medical

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Malpractice Closed Claim Reporting Law (Chapter 48.140 RCW) that requires the non-admitted insurers, admitted insurers, risk retention groups and self-insured providers and facilities to report their closed claims to my office.

At the national level, I've been very involved in developing the model medical malpractice reporting standards at the NAIC. In 2007, I chaired the Statistical Information Task Force, and my staff are now in charge of the sub-group that is continuing to work on "Best Practices" for data reporting. The NAIC "Medical Professional Liability Closed Claim Reporting Model Act" is very similar to Washington State law, which could be preempted by HR 1065 without the added language.

I understand that this model law will be considered again by the Property and Casualty Insurance (C) Committee later this month in order to make a small revision in the way the model law handles jurisdictional issues with respect to captive insurers. I trust that you will continue to support the model law.

In addition, at the NAIC Spring meeting, my staff demonstrated our online reporting system that my department developed - and we will offer it free of charge to any insurance department which passes similar legislation to that contained in the Model Act.

Without the medical malpractice claims data from the non-admitted market, public policymakers will not have the complete picture. The amount of business written in the admitted market is shrinking. In my state, in 1997, it represented 71.8% of the market share and it dropped to 58.3% by 2006 - and it continues to drop. The lack of reporting of data from the non-admitted market was the number one criticism of the reports my office prepared prior to the passage of the new reporting laws in 2006.

As I stated in my report, "*Medical Malpractice Closed Claim Report Claims Closed from July 1, 1997 through June 30, 2007:*"

Surplus lines (non-admitted) insurers, self-insurers and risk retention groups did not provide closed claim data for this report. Information from the NAIC database shows that the market share for surplus line carriers increased significantly in 2002, and surplus line carriers retain a significant market share in Washington State. Market share for risk retention groups is also growing, as more providers are choosing to buy insurance from non-traditional insurance markets. There are no data available to estimate how much risk hospitals, health care facilities or providers retain through self-insurance programs.

The entire report is available at:

<http://www.insurance.wa.gov/insurers/special/MedMalDataColl2007.pdf>

Thank you again for contacting me. As you can see, I feel pretty strongly about this change to HR 1065, affecting my state's right to collect this important data. Please feel free to contact me if you have any questions. And, I hope you'll vote in favor of the closed claim reporting model law when it comes up in the Plenary Committee, which I hope will occur at the fall meeting.