

ATTACHMENT 14

WRITTEN TESTIMONY

COMMENTS SUBMITTED BY CARRIERS

| | |
|--|----------|
| Debra Goldberg, J.D., MPH, RPLU, Essex Insurance Company | 12/03/14 |
| David J. Luca, ProSelect Insurance Company (Coverys) | 12/04/14 |
| George W. Roussos, CPCU, New Hampshire Assoc of Domestic Ins Companies | 12/03/14 |

COMMENTS SUBMITTED BY PRODUCERS

| | |
|---|----------|
| Jeff Foy, Foy Insurance | 12/04/14 |
| David Stowe, Eaton & Berube Insurance | 12/04/14 |
| Bradford J. Lachut, Esq., Professional Insurance Agents (PIANH) | 12/04/14 |

COMMENTS SUBMITTED BY JUA

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|--------------------|----------|
| Jim Vaccarino, JUA | 12/11/14 |
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COMMENTS SUBMITTED BY MEDICAL PROVIDERS

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| Chris Schwieger, BSN, PA-C, CCHP, Family medicine, correctional medicine | 11/16/14 |
| Susan Abraham, Psychiatrist | 11/17/14 |
| Mark P. Cartier MD, Family physician | 11/17/14 |
| Nancy K. Johnson, Lobbyist for podiatrists | 11/20/14 |
| John A. Parent, DPM, Doctor of Podiatric Medicine | 11/20/14 |
| Gary Murata, MD, Urologist | 11/22/14 |
| James J. Williamson, New Hampshire Dental Society | 11/25/14 |
| Roger Belson, MD | 11/24/14 |
| George Bower, Internal medicine | 11/30/14 |
| Robert Christ, DMD | 12/01/14 |
| Autumn Vergo, NH Certified Midwife, NH Midwives Association | 12/02/14 |
| Ana Rosen Vollmar, NHCM, CPM, NH Certified Midwife, Cert. Pro. Midwife | 12/02/14 |
| Stacy Evie, APRN, NH Nurse Practitioner Association | 12/05/14 |
| NH Midwives Association | 12/11/14 |
| NH Midwives Association | 01/30/15 |

WRITTEN TESTIMONY

COMMENTS SUBMITTED BY CARRIERS

Essex Insurance Company

In response to the call for a public hearing by the Insurance Department of the State of New Hampshire and a request for input by that same governmental body, Essex Insurance Company provides the following written statement for comment in the Public Hearing Concerning the New Hampshire Medical Malpractice Joint Underwriting Association.

Essex Insurance Company ("Essex") is an 'A' XIV rated carrier by A.M. Best and is authorized to do business in the State of New Hampshire on a Surplus Lines basis. Essex's parent company, Markel Corporation, is publicly traded on the NYSE and, in 2013, its insurance operations had in excess of \$3.9 billion in gross written premium with shareholders' equity of \$6.7 billion.

As a Surplus lines carrier in the State of New Hampshire, Essex is able to consider a wide range of risks including facility risks, individual physicians of all specialties, and group practices. Essex is able to provide coverage for risks that may not be able to be addressed by the standard markets, including physicians with multistate practices or locum tenens organizations that are placing physicians on a regional or national basis including placements in New Hampshire. At this time, Essex is not able to disclose its guidelines and rate structure for underwriting physician-based risks as this is proprietary information; as a Surplus lines carrier, Essex does not file rate and form with the State.

Essex is not in a position to offer comment on the need for a residual market in the State of New Hampshire nor to recommend an efficient structure for a guaranteed issue mechanism. As a Surplus lines carrier, our direct knowledge of the medical malpractice liability market in New Hampshire is limited to the information contained in the applications for coverage that we receive from physicians and facilities through the wholesale broking market. Such applications only come to Essex after the applicant has been declined by admitted Errors & Omissions insurance carriers. It is our position that this limitation to our direct knowledge of the whole of the New Hampshire medical malpractice liability market prevents us from offering meaningful comment on the best mechanism for guaranteed issue coverage. Essex observes, in general, that the commercial market, including both admitted and Surplus lines carriers, has served the State's healthcare providers in the last years and anticipates that the commercial market will continue to serve this population by making medical liability insurance available in the years to come.

Debra Goldberg, J.D., MPH, RPLU
Director, Medical Underwriting

Markel Corporation
Ten Parkway North
Deerfield, IL 60015
Direct: (847) 572-6342
www.markelcorp.com



December 4, 2014

Commissioner Roger A. Seigny
New Hampshire Insurance Department
21 South Fruit Street, Suite 14
Concord, NH 03301
Sarah.Prescott@ins.nh.gov

Via hand delivery and email

**RE: New Hampshire Insurance Department Public Hearing Concerning the *New Hampshire Medical Malpractice Joint Underwriting Association*
Public Comments from ProSelect Insurance Company**

Dear Commissioner Seigny:

This statement is submitted by ProSelect Insurance Company (“ProSelect”), a Coverys company. ProSelect’s written and oral testimony is given in response to the New Hampshire Insurance Department’s (the “Department”) invitation to submit testimony addressing whether medical professional liability (“MPL”) coverage is readily available in the state. The notice for this hearing asked for responses to the following two questions:

- 1) Is medical malpractice coverage “readily available” in the commercial market? In other words, if the JUA were to close, would health care providers be able to purchase medical malpractice insurance from commercial insurers?
- 2) If coverage isn’t “readily available,” what is the best way to make malpractice insurance available on a guaranteed-issue basis?

As to question one, ProSelect believes MPL coverage is readily available in the New Hampshire commercial market. As evidence of this, ProSelect points to the fact that in 2013 there were 16 MPL commercial carriers writing business in New Hampshire with at least 1% of the market share. ProSelect, one of those 16, writes all types of health care providers in all geographic areas of New Hampshire and offers both claims made and occurrence policy options. Further, there is also a healthy surplus lines market in New Hampshire, which is able to underwrite providers that may pose a higher underwriting risk.

ProSelect provides coverage to over 750 physicians, certified nurse midwives and other health care providers as well as 7 facilities in New Hampshire. In 2013, ProSelect had approximately \$11 million in direct written premium in New Hampshire, and ProSelect holds an A (excellent) rating from A.M. Best.

Presently, the New Hampshire Medical Malpractice Joint Underwriting Association (the “JUA”) functions less as an option of last resort, and more as a market competitor. This is further evidence that coverage is readily available in the commercial market.

As to question two, if the Department is concerned about coverage for health care providers with poor claims histories, the Department may consider a “take all comers” approach which addresses guaranteed

COVERYS One Financial Center | P.O. Box 55178 | Boston, MA 02205-5178 800.225.6168 www.coverys.com

*Medical Professional Mutual Insurance Company ProSelect Insurance Company ProSelect National Insurance Company, Inc.
MHA Insurance Company Washington Casualty Company*



coverage for any market circumstance. This would be enhanced with a mechanism like a reinsurance plan. In a reinsurance plan, carriers would not be able to decline coverage based on claims history, but would be able to cede the coverage while still servicing the insurance contract.

ProSelect is available to work with the Department and provide additional information as the Department deliberates on this matter. Do not hesitate to contact me if additional information would be helpful at dluca@coverys.com or 617-526-0201. ProSelect is committed to continuing to provide New Hampshire healthcare providers with insurance products to meet their needs. Thank you for the opportunity to offer our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Luca", written over a horizontal line.

David J. Luca
Associate Counsel

Orr&Reno

George W. Roussos
groussos@orr-reno.com
Direct Dial 603.223.9143
Direct Fax 603.224.2318

December 3, 2014

SENT VIA EMAIL TO sandra.barlow@ins.nh.gov

The Honorable Roger A. Sevigny, Commissioner
New Hampshire Insurance Department
21 S. Fruit Street, Suite 14
Concord, NH 03301

Re: Public Hearing Testimony concerning New Hampshire Medical Malpractice Joint Underwriting Association

Dear Commissioner Sevigny:

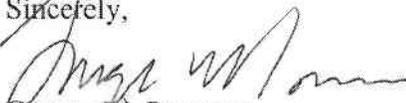
This testimony is submitted on behalf of the New Hampshire Association of Domestic Insurance Companies ("NHADIC"). NHADIC members include liability insurers which write automobile, homeowners and commercial insurance in New Hampshire. Even though they do not write medical malpractice insurance, they are required to be members of the JUA and, as members, they are subject to assessment to pay losses and expenses of the JUA if JUA assets are insufficient. If liability insurers paid an assessment, they could be repaid by an assessment against health care providers or by surcharge on homeowner, automobile and other liability insurance policies.

Good management and a strong JUA surplus make it unlikely that an assessment of liability insurance companies will be needed. For that reason, liability insurers have not objected to being put at risk, even though they have nothing to do with providing malpractice insurance to doctors and hospitals.

However, NHADIC would not favor a change in the residual market for medical malpractice insurance which continued to put liability insurers at risk financially if such a change were to diminish the security of the current surplus or negatively impact governance. In that event, it may be timely to discontinue the requirement that liability insurers and their customers who buy homeowners and automobile insurance policies may be called upon to subsidize the cost of medical malpractice insurance for physicians and hospitals.

Thank you for your consideration of these comments.

Sincerely,



George W. Roussos

1234878_1

P 603 224-2381 F 603 224-2318 worr-reno.com | 45 S. Main Street | PO Box 3550 | Concord, NH 03302-3550

WRITTEN TESTIMONY

COMMENTS SUBMITTED BY PRODUCERS

NH MEDICAL MALPRACTICE JOINT UNDERWRITING ASSOCIATION

Comments for Public Hearing 12/2014

By

Jeff Foy - Agency Principal & 25+ year licensed insurance agent/producer
Foy Insurance – NH-based independent insurance agency

You asked for response to three questions:

- 1) Is medical malpractice coverage “readily available” in the commercial market? I strongly believe the answer is yes.
- 2) If the JUA were to close would health care providers be able to purchase medical malpractice insurance from commercial carriers? I believe the answer is most but not all health care providers would be able to purchase coverage from a NH admitted market.
- 3) For those health care providers where coverage is not “readily available”, what is the best way to provide coverage for them on a guaranteed basis? The answer is the existing NHMMJUA with certain modifications.

In NH there are 4 state-run property & casualty insurance residual programs:

- 1) NHMMJUA
- 2) NHCAIP – NH Commercial Auto Insurance Plan
- 3) NHARF – NH Auto Reinsurance Facility (for personal auto)
- 4) NH Assigned Risk Workers Compensation program

To understand what modifications to the NHMMJUA are needed is to review against other residual market programs that are working or not working as intended and what can be learned from how they work.

The one residual market program that is working the closest to its intention is the assigned risk workers compensation program. Workers compensation coverage is statutory in NH and many employers are of high hazard or prior poor loss experience and thus the assigned risk is the answer for them to acquire coverage. As of year end 2013, there were 5367 policies accounting for \$26 million in NH workers compensation premium. The NH assigned risk accounts for 18%+ of all workers compensation policies and 10%+ of all workers compensation premiums. Additionally because of voluntary market underwriting decisions, the assigned risk program is growing year-over-year including by 10% for policies in force and 26% for premium from 2012 to 2013. The premiums are higher than the voluntary market so therefore there is “pain” for the employers in this program and therefore an incentive to reduce their losses or reduce their exposures if they want to “get out” of the assigned risk and acquire coverage through the voluntary market. There are some functional issues with the workers compensation assigned risk that could be improved upon but otherwise the program is working as intended.

The NHMMJUA creates very little if any “pain” for its insureds in terms of pricing or coverage terms and is almost operating like a standard or preferred market. Therefore, the first change to the NHMMJUA would be to adjust the pricing or terms to create “pain” and thus an incentive for any insured to want to get out and back to a standard market.

The NHCAIP for commercial or business auto insurance is small and generally the recipient of the most undesirable risks even though auto insurance is not mandatory in NH. In 2012, there were only 37 new policies for the entire year and the total premium for all policies was \$560,000. The program was in a decline dropping 30% from 2011 to 2012. The primary types of risk in the CAIP program is coverage for pizza or other delivery, drivers with bad motor vehicle records, or young drivers who own pick-ups or vans. The CAIP rates generally create “pain” for the insured. Unfortunately there are certain auto risks that neither fit the CAIP or the NHARF which creates a problem for agencies like mine. Is CAIP necessary? Yes because we want NH citizens to be able to secure auto insurance instead of giving them an excuse to drive without any coverage. Can CAIP be improved? Absolutely and the first needed change is to expand its eligibility so that there are no auto risks that don’t fit either CAIP or NHARF and perhaps the best solution is to combine CAIP and NHARF into one overall auto insurance program. What can NHMMJUA learn from CAIP? You need to make sure that your availability guidelines are broad enough for any health care provider and that you can charge a rate or offer reduced coverage terms that create some “pain” for the insured.

The NHARF for personal auto is very small even though personal auto is the largest property & casualty insurance line of business in NH and in the country. Why is NHARF so small in NH? It is small because personal auto is a vibrant market and includes carriers like Progressive that want to write poor risks like drivers with bad motor vehicle records or multiple at-fault accidents. It is also very small because NH is a “take all comers” state where all voluntary personal auto carriers can’t non-renew a policy and have to offer a rate to all drivers regardless of their driving record or claims frequency. The NHARF has been in a steady decline for many years going from \$2.6 million in 2006 to under \$500,000 and 600 policies in 2012. Why would there be any autos in the NHARF if the personal auto insurance market is so vibrant? The reason is because the rates in NHARF are sometimes lower than Progressive or other non-standard auto writers. Like the NHMMJUA, this rate advantage for being in a residual program should never happen. Without “pain” in the form of rate or terms there is no incentive to leave. Sort of like an unwanted house guest – if the food is too good and the bed is too comfortable then you may have a freeloader on your hands.

In summary, the NHMMJUA should remain but the rates should be increased and the terms be less generous to drive out the preferred and standard insureds that can obtain coverage with one of the other reputable malpractice markets. For the remaining non-standard JUA insureds they will feel the "pain" and thus work to reduce their exposure and hopefully get out of the JUA eventually. For the high risk insureds they will be assured that coverage will always be available to them so that they can safely plan and operate their health care business from year to year.

An additional reason to keep the JUA is for a contingency plan in the event the medical malpractice insurance marketplace dries up or becomes very restrictive. I believe we currently have a shortage of doctors (specifically young doctors) to service our population in NH. Therefore we need to keep a JUA active so that if any of these doctors begins to have difficulty obtaining insurance they don't leave the state or medicine in general.

Finally, the NHMMJUA needs to stay operational because one of the primary responsibilities of medical malpractice insurance is to provide claims made "tail" coverage for retired doctors. Therefore, keep the JUA operational while reducing new and renewal policies that don't need to be in the JUA.

- Jeff Foy, Foy Insurance

December 4, 2014

Sandra Barlow
NH Insurance Department
21 South Fruit Street
Concord, NH 03301

Re: Reauthorization of NHMMJUA

- My name is David Stowe and I'm an insurance agent with Eaton & Berube Insurance Agency in Nashua, NH and I specialize in medical professional liability insurance.
- I've sold and serviced NHMMJUA insurance policies since August of 2002.
- I'm offering comment on behalf of 50 medical providers whose coverage I handle and who are insured with NHJUA.
- I believe it would be in the best interest of these doctors if the Department was to reauthorize the JUA.

Is medical malpractice coverage "readily available" in the commercial market?

- In addition to NHJUA I also represent Coverys, Medical Mutual Insurance Company of ME, Medical Protective and I have access to Excess & Surplus Lines markets through various insurance wholesalers.
- Outside of large self-insured programs such as Dartmouth Hitchcock Medical Center incl. the Hitchcock Clinics, Granite Shield which insures several southern region hospitals and their employed physicians, Health Care Indemnity which insures Parkland Medical Center, Portsmouth Regional Hospital and their employed physicians; I believe the majority of independent physicians and their practices are insured with one of the four companies previously mentioned (Coverys, MMIC, MedPro & JUA).
- If a doctor is claims free, board certified, in good standing with their specialty society e.g. ACEP, ACOG, etc. and has no current or prior issues with the Board of Medicine then all four carriers should be viable options for this doctor; therefore, I would say that malpractice coverage is "readily available" for this doctor.
- 33 out of the 50 doctors that I have insured with NHJUA are in the same medical specialty - Radiology. This specialty classification is one that seems to have a higher frequency of claims and the claims often have larger settlements. Currently, NHJUA is surcharging six of these doctors for prior paid claims and there are three other claims of consequence that don't quite make it to the level that warrants a surcharge. The total paid claims from this block of 33 providers in the past ten years is \$3.5M.
- I speak to underwriters at Coverys, MMIC and MedPro regarding these providers each time their JUA policy comes up for renewal and so far they have been unable to offer

cover terms due to the poor claims experience and/or have indicated that they can't offer a competitive quote. If NHJUA is not reauthorized and the standard options previously mentioned will not offer coverage then I will be forced to look for coverage from Excess & Surplus lines companies where policy forms are not standard and pricing tends to be what the market will bear.

- If it were not for NHJUA these doctors would likely be forced to seek coverage from a surplus lines company where policy forms are not reviewed and approved and where premiums tend to be what the market will bear. I would argue that for these doctors, NHJUA is their best option.
- These doctors provide critically important care to NH citizens and are trying to cope with declining reimbursements, increases in their overhead expenses and a growing volume of additional regulations and compliance matters every day. I think losing NHJUA as a coverage option will have a deleterious effect on these doctors.
- If the JUA is not reauthorized then I would say that medical malpractice coverage will have to be deemed "not readily available" in the commercial market for these doctors.

Sincerely,

David Stowe



DATE: December 4, 2014
TO: New Hampshire Insurance Department
FROM: Professional Insurance Agents of New Hampshire Inc.
STATEMENT RE: NEW HAMPSHIRE MEDICAL MALPRACTICE JOINT
UNDERWRITING ASSOCIATION

**PROFESSIONAL
INSURANCE
AGENTS**

25 CHAMBERLAIN ST.
P. O. BOX 997
GLENMONT, NY 12077-0997
(800) 424-4244
FAX: (888) 225-6935
WEB: www.pia.org
E-MAIL: pia@pia.org

Professional Insurance Agents of New Hampshire Inc., an association of independent insurance agents throughout the state and their employees, believes that the New Hampshire Medical Malpractice Joint Underwriting Association (JUA) is still a necessary participant in the medical malpractice market. However PIANH is advocating for modifications to the existing JUA model to better reflect its role as a residual market.

The JUA was created in the 1970s as a residual marketplace for medical malpractice insurance in response to a reduction of the number of insurance companies willing to write medical malpractice in the voluntary market. Since that time the medical malpractice marketplace has rebounded to a point where PIANH believes that medical malpractice coverage is readily available in the voluntary commercial market.

PIANH does believe that the JUA is still a necessary player in the marketplace for those high risk insureds that would otherwise be unable to obtain coverage. The JUA provides these high risk insureds with a level of security that allows them to safely plan and operate in the health care business now and into the future. Further the JUA is needed in order to avoid another crisis in the marketplace similar to what existed in the 1970s when the program was created. If at some point the medical malpractice insurance marketplace becomes too restrictive the JUA will serve as a valuable source of insurance for many New Hampshire health care professionals.

While the JUA is still necessary, the program was designed to be a market of last resort for those whose risks the voluntary market was unwilling or unable to write. However, despite its origins today for many insureds, the JUA has actually become the preferred market. This is due in part to the fact that the JUA is matching or beating the prices of some carriers in the voluntary marketplace. This is not the role that a market of last resort should fulfill. By offering rates that are competitive with those found on the voluntary market, the JUA is not providing any incentive for insureds to reduce losses and make their risks more attractive. Many insureds view the JUA as a permanent answer to their medical malpractice needs and not a temporary solution as a market of last resort should be.

The JUA should provide a backstop for those that cannot procure coverage elsewhere, not be the preferred market for attractive risks that could otherwise find coverage in the voluntary market. For that reason PIANH is advocating for the JUA to increase its rates and/or reduce coverages offered. By taking these steps the JUA would accomplish the goal of making the program less attractive to desirable insureds that could procure insurance elsewhere, while also creating an incentive for those unable to obtain insurance on the voluntary market to make their risks more attractive. By increasing rates and/or reducing coverages offered the JUA would be better function as a true residual market.

WRITTEN TESTIMONY

COMMENTS SUBMITTED BY JUA

NHMMJUA
Summary of Operations and Activities
2010-2014

Operations:

Underwriting: During the period 2010 through 11/14, the JUA saw a decrease in the number of insured policyholders as follows:

2010: 676

2011: 550

2012: 504

2013: 469

2014: 457

The current breakdown of policyholders is as follows:

| | |
|----------------------------|-----|
| Physicians and Osteopaths: | 214 |
| Surgeons: | 10 |
| Dentists: | 14 |
| Certified Midwives: | 10 |
| Chiropractors: | 9 |
| Podiatrists: | 17 |
| Physician Assistants: | 19 |
| Optometrists: | 48 |
| Nurses: | 50 |
| Facilities: | 21 |
| Other: | 45 |

The split between those purchasing Claims Made coverage and Occurrence coverage has remained constant at 65% (C/M) vs. 35% (Occ.). Written Premium at 1/1/10 was \$6.025 Million and at the end of the 3rd Q of 2014 was \$2.073 Million.

The JUA also has funded \$3.4 MM to cover the cost of 'tail' premium for those Claims Made policyholders who will retire under the modified claims made program. According to that plan, any insured holding a claims made policy for at least ten years and fully retires from the practice of medicine at age 55 or later will receive a reporting endorsement ('tail') at no cost.

At 1/1/10, total of 37 policyholders were experience rated for excessive indemnity paid. The number of experience rated policyholders at 11/1/14 is 27.

During the summary period, the JUA has each year offered a fifteen (15%) per cent premium credit to any policyholder taking advantage of a Risk Management home study course. The courses offered have mirrored issues which figure prominently in JUA loss experience such as Misdiagnosis, Record Keeping and Communications among Team Members. For 2014, a total of 182 insureds out of 419 participated in this offering.

Claims: Claims activity during the summary period has been variable as follows:

| | <u>Total Paid Indemnity</u> | <u>Outstanding Case Reserves</u> |
|-----------|-----------------------------|----------------------------------|
| 2010 | \$3.4 MM | \$11.3 MM |
| 2011 | \$6.9 MM | \$8.8 MM |
| 2012 | \$2.8 MM | \$5.6 MM |
| 2013 | \$2.9 MM | \$5.5 MM |
| 2014 (Q3) | \$3.1 MM | \$6.4 MM |

Since 1984, the JUA has consistently followed the same posture in negotiating closure of claims. NO claim is paid unless the claim is legitimate and the demand is reasonable. In most cases, claims are resolved without resorting to litigation but in the rare circumstance where the claim or demand is deemed unreasonable, litigation is pursued.

Investment Activity: During the summary period, the value of the JUA portfolio has continued to improve. Save for the distribution of the \$110 MM pursuant to SB 170, the value of JUA equity through the period is as follows:

| | |
|-----------|--|
| 2010: | \$164.5 MM |
| 2011: | \$62.3 MM (\$110 MM paid to policyholders) |
| 2012: | \$76.2 MM |
| 2013: | \$81.9 MM |
| 2014 (Q3) | \$82.9 MM |

(N.B. These figures do not include \$8 MM in Stabilization Reserve Fund Assets.)

Actuarial Activity: No rate change was effected in either 2010 or 2011. IN 2012, the JUA increased rates by 12%, in 2013 by 3.5% and in 2014 by 4.0%. In 2013, the JUA Board

established a Premium Deficiency Reserve of \$600K as security in the event that premiums collected were insufficient against projected liabilities and expenses. JUA actuaries have recommended an eighty (80%) per cent rate increase overall for both claims made and occurrence policies for 2015.

Activity:

In 2010, the NH legislature passed Senate Bill 170 obligating the JUA to distribute a surplus of \$110 MM to policyholders of record from 1986. The result of the Senate action has seen a number of material changes to the JUA structure. Most significant is the elimination of the JUA's exemption from federal income tax. The formation of a legislative study commission, also the result of SB 170, has compelled an analysis of the current nature and future structure of the JUA.

Breakout Other

- 6 Medical Assistants
- 1 Pharmacist
- 1 Dietician
- 2 Speech/language therapists
- 3 Ophthalmologic technicians
- 2 Clinical social works
- 1 licensed massage therapists
- 4 dialysis technicians
- 1 Psychologist
- 2 Medical lab technicians
- 1 Optician
- 2 Physiotherapists
- 19 corporations
- 45 total

created: 1/20/2015

WRITTEN TESTIMONY

COMMENTS SUBMITTED BY MEDICAL PROVIDERS

Barlow, Sandra

From: Chris Schwieger <Christopher.M.Schwieger@hitchcock.org>
Sent: Sunday, November 16, 2014 1:05 PM
To: Barlow, Sandra
Subject: FW: JUA

From: Chris Schwieger [mailto:Christopher.M.Schwieger@hitchcock.org]
Sent: Sunday, November 16, 2014 1:04 PM
To: sandra.barlow@ins.gov
Subject: JUA

Dear Ms. Barlow.

I will be unable to attend hearing in regards to this matter on 12-4-2014

I have my own medical practice, I provide medical care to multiple NH county jails over the last 4 yrs.

Medical malpractice is not readily available in the open market place and certainly not at a reasonable rate.

Never mind when I mention that I will be providing medical services in a county jail. (I have been declined med malpractice coverage on this basis)

The best way to have medical malpractice available on a guaranteed issue basis is to maintain the JUA

Respectfully,

Chris Schwieger, BSN, PA-C, CCHP
American Institutional Medical Group, LLC
603-340-2478

IMPORTANT NOTICE REGARDING THIS ELECTRONIC MESSAGE:

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Barlow, Sandra

From: Susan Abraham <56susab@gmail.com>
Sent: Monday, November 17, 2014 4:38 PM
To: Barlow, Sandra
Subject: Malpractice ins

I have been in practice in NH since 2003 as a Psychiatrist. When I tried to get malpractice ins in 2003, I was unable to because I had a prior lawsuit even though there were no penalties against me. My name is Susan Abraham. I work in Keene. I can be reached at 603 357-3848 ext 118

Sent from my iPad

Barlow, Sandra

From: m cartier <mcartiermd@yahoo.com>
Sent: Monday, November 17, 2014 8:27 PM
To: Barlow, Sandra
Subject: Medical Malpractice Insurance

In 2003 as the malpractice crisis grew I lost my insurance due to several claims. No private insurance company would write a policy for a reasonable rate. The first years premium was \$45,000 and it rose from there to an astronomical amount. This would have been compounded by the need to buy tail insurance at five times the final years premium. None of these numbers are attainable for a Family Physician.

Fortunately I worked on the border of Maine and New Hampshire. I looked into your state and through the JUA was able to obtain a policy for one third the cost of the above policy. I moved my practice to New Hampshire and a significant number of my patients came with me allowing me to make a living and stay in the area.

The medical malpractice crisis will happen again. When the stock market has several bad years in a row, more claims are filed and settlements are higher than expected that crisis will recur. As much as I am a believer in free markets, at that time the private insurers will react in the same way. They will not insure what they believe are high risk physicians and if there is no JUA you will see an exodus of physicians. Since New Hampshire is a rural state replacing those physicians will never be easy.

I firmly believe the JUA provides a valuable commodity and if it is allowed to expire a disservice is being done to the people of New Hampshire.

Thank you.
Mark P. Cartier MD

From: [Nancy K. Johnson](#)
To: [Barlow, Sandra](#)
Subject: JUA Meeting next week
Date: Thursday, November 20, 2014 4:48:39 PM

Sandra

I plan on attending. I am the lobbyist for the podiatrists and have just learned of the meeting.

Is there a LSR filed? by whom?

I know we do not want the JUA to expire, but given the date to file, isn't it almost too last?

Please advice.

Nancy K. Johnson 652-4357

From: jj.parent@comcast.net
To: [Barlow, Sandra](#)
Subject: JUA hearing
Date: Thursday, November 20, 2014 6:22:41 PM

I am a retired Podiatrist, currently in Arizona for the winter, unable to attend the hearing on Dec. 4, 2014.

As regards the hearing for the re-authorization of JUA, I have a question which I think should be considered.

As an insured by JUA for 20+ years, we were promised free tail coverage by JUA.

So what happens to those of us who are expecting this benefit to continue if JUA is dis-banded?

Thank you,
John A. Parent, DPM

From: [Gary Murata](#)
To: [Barlow, Sandra](#)
Subject: New Hampshire JUA Comment
Date: Saturday, November 22, 2014 11:57:05 AM

As far as I know there is no other medical malpractice insurance company that will write an occurrence malpractice policy. The other malpractice insurance policies available are claims made.

Personally, I have had an occurrence policy through the NHJUA for over 20 years and have retired this year. I am now relying on my occurrence policies in the past to provide malpractice coverage for any events that may arise in the future without having to pay any additional premiums. If the JUA were to cease functioning, either provisions will have to be made to extend coverage until the statute of limitations runs out or some reimbursement must be made so that tail coverage from some other insurer can be purchased. Unfortunately I doubt if any malpractice insurer will sell a tail policy to a previously uninsured so it seems that similar medical malpractice coverage is simply not available.

Gary Murata MD

From: Jim Williamson
To: Barlow, Sandra
Subject: JUA
Date: Tuesday, November 25, 2014 3:26:28 PM

Ms. Barlow:

The New Hampshire Dental Society would like to offer a brief comment on the JUA issue. We will not be able to attend the Public Hearing on December 4, 2014.

Some of our members are, or have been insured, by the JUA and they have found it to be a beneficial service. After talking to our members I would ask that the JUA be continued as it does provide a very valuable service to some of the dentists in New Hampshire. I am not sure some of them could find coverage elsewhere if the JUA was not available to them.

Thank you,

Jim Williamson

James J. Williamson
Executive Director
New Hampshire Dental Society
23 South State St.
Concord, N.H. 03301
603-225-5961 Fax 603-226-4880
jwilliamson@nhds.org
www.nhds.org

PMI

ROGER E. BELSON, M.D.

P.O. Box 526, Henniker, New Hampshire 03242-0526
November 24, 2014 603-428-3262

Sandra Barlow
NH Dept of Insurance
21 South Fruit St.
Concord, NH 03301

RE: NHMMJUA Public Hearing 12/4/2014

Dear Ms. Barlow,

I am strongly against any dissolution of the NHMMJUA. I have been insured with them for 35 years. I have "occurrence" insurance which suits my needs and insurance for "part time" practice which gives me the financial incentive to stay in practice. I am too late in my career to switch to claims made policies with requirements for buying tail coverage. And it would be too expensive to pay for full time coverage with a part time practice. As health care delivery evolves, there are more and more of my colleagues practicing part time.

I have inquired with other local insurers but none of them could offer me an occurrence policy or a part time policy.

Even if insurance seems more available now than in the past, the pendulum with malpractice always swings and there will be a time when that is not so. Having a strong JUA is important if the NH Insurance Department want to be seen as forward looking instead of just reactive to crises.

Since the JUA funds itself and is not a State expense, and since it has been changed to non participating - so the State could benefit from a future surplus, there seems to be no rational reason to eliminate the program - other than as retribution for it's failure to simply hand over its prior surplus to the State as requested by the Lynch administration.

If the Insurance department wants to keep the small town practices in business for the rural citizens of the State - then it should recommend continuance of the JUA.

If however the recommendation is to wind down the JUA (which would be a grave mistake), then it would have to coupled with a mandate of all other insurers doing business in the State to offer affordable "occurrence" and "part time" policies.

Sincerely,


Roger Belson MD
Solo practitioner

From: gbowermd@iuno.com
To: [Barlow, Sandra](#)
Subject: Continuance of NH JUA
Date: Sunday, November 30, 2014 4:35:55 PM

Regretfully I can not be present at the hearing on December 4.

I would appreciate if my input would be included in deciding to continue the existence of the JUA.

I have been a licensed physician in NH since approximately 1987, practicing Internal Medicine. I have been with the JUA for a greater part of that time, at least 15 years. I had sought coverage from several other insurance providers during that time, one of which filed bankruptcy.

I have been working with a broker over the years and was advised that the JUA was my best choice for the available rates.

There was one occasion if I recall correctly when I was refused coverage by a company in Maine, this may have been immediately following a settlement in a suit. I have never had to stop practicing because of lack of coverage.

It has been a privilege to have the JUA work with me in providing malpractice coverage to my Internal Medicine practice in Milford.

Thank you.

Sincerely;
George J. Bower, M.D.
Internal Medicine of Milford 603-673-8480

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ROBERT T. CHRIST, D.M.D.
GENERAL AND PREVENTIVE DENTISTRY

50 DERRY STREET
HUDSON, N.H. 03051
(603) 882-4807

12/1/14

Dear Sandra Barlow,

I am submitting a written comment
re the Dec. 4th public hearing re
the NHMMJVA.

I am a dentist in Hudson, N.H.
Since I have a delicate situation,
the NHMMJVA was the only
malpractice insurance I could/can
obtain on an "occurrence" basis.
And, due to my adverse situation,
there is only one other medical
malpractice that will even
consider insuring me, and they
do NOT offer "occurrence" basis,
but only "claims-made" basis,
and they have a \$10,000 deductible.

In conclusion, I think
NHMMJVA is very important
to continue because, in my case,
other medical malpractice
(really dental) is NOT readily
available".

Sincerely yours

Robert T. Christ, D.M.D.

From: [Autumn Vergo](#)
To: [Prescott, Sarah](#); [Dolcino, Chiara](#)
Subject: NH JUA- General Questions
Date: Tuesday, December 02, 2014 11:00:47 AM

Hello, Sarah,

Thank you very much for providing your contact information and offering to try to answer some of my questions about the JUA.

I am a New Hampshire Certified Midwife who has been insured by the JUA since 2009. From 2009-2014 I was the owner of a birth center in Milford NH, which is still operating, and am currently engaged in developing a new birth center in the Manchester area. I contacted you this morning on behalf of the New Hampshire Midwives Association.

In preparing for the public hearing on Thursday, we at the NHMA realized that our information about the structure and function of the JUA is incomplete and wondered if you could help fill this knowledge gap by answering, or directing me to the answers to, the following questions:

How is the JUA funded? (Provider fees vs. public money, etc.)

What is the operating structure of the JUA and how does the JUA interface with the NH Insurance Department?

What is known about the relative mix of providers who utilize the JUA-- we understand that the JUA supplies about 15% of the market share but do not understand the relative proportions of physicians, nurse practitioners, other providers, etc. who obtain their insurance through the JUA.

I appreciate any help you can provide me. As I mentioned on the phone, I have already contacted the JUA directly and they did not know the answers to these questions, though they did agree to do some research.

Thanks very much,

--

Autumn Vergo NHCM, RN

December 2, 2014

Commission to Study the New Hampshire Medical Malpractice Joint Underwriting Association
Re: New Hampshire Insurance Department Public Hearing
Concerning the NHMMJUA on December 4, 2014, 10:00am
Attn: Sandra Barlow / Sandra.Barlow@ins.nh.gov

New Hampshire Insurance Department
21 South Fruit Street
Concord, NH 03301

Dear Members of the Commission:

I am writing to voice my support for the NHMMJUA, and to urge New Hampshire to continue to support this organization, which through its provision of accessible medical malpractice insurance (covering approximately 15% of the state's healthcare providers) ensures access to quality healthcare. I am a Certified Professional Midwife (CPM) and a New Hampshire Certified Midwife (NHCM). CPMs and NHCMs provide maternity care services in freestanding birth centers and homes, and are the state's primary home birth and out-of-hospital birth providers. Before becoming licensed, I worked as a student-midwife for 1.5 years with Kate Hartwell, CPM, NHCM, owner of the Concord Birth Center in Concord, NH, and Cindy Owen, CPM, NHCM, who also works at the Concord Birth Center. Though I am currently based outside of New Hampshire, I maintain my license and continue to return to assist at the Concord Birth Center during busy times. And when I work at the birth center, I purchase medical malpractice coverage through the NHMMJUA.

For generations, babies have been born at home in New Hampshire. In 1999, when NHCMs were first licensed, the statute (RSA 326-D) included the following statements of purpose: "I) The general court finds that the practice of midwifery has been a part of the culture and tradition of New Hampshire since colonial days and that it is in the public interest to remove impediments to the practice of midwifery. II) For personal and economic reasons some New Hampshire citizens will have home births. It is the intent of the general court to preserve the rights of women to deliver children at home, to remove obstacles to safe out-of-hospital deliveries, and to assure quality care." Indeed, New Hampshire has long been a national leader in supporting the right of its citizens to choose where, how, and with whom their babies are born, as evidenced by four critical pieces of legislative action:

1. RSA 326-D: New Hampshire's statute licensing NHCMs in 1999. This law was one of the first in the country, and since then it has been used as model legislation in other states seeking to license midwives attending out-of-hospital births.
2. RSA 151:2 and Administrative Rules He-P 810: New Hampshire's statute and rules licensing independent, freestanding birthing centers, thereby expanding its citizens' rights and access to safe out-of-hospital birth.
3. SB 131: Passed in 2008, this bill mandates the reimbursement of midwifery services provided by certified midwives, including home birth and birth in licensed health care facilities like independent birth centers, by all insurance providers covering maternity care. This works to ensure that women of all economic classes are able to access midwifery care,

enabling midwives to serve a broad spectrum of families, and reflecting the state's commitment in 1999 to "remove obstacles to safe out-of-hospital deliveries."

4. Legislative authorization and establishment of the NHMMJUA in 1978 by the New Hampshire Insurance Department: The NHMMJUA allows midwives to access affordable medical malpractice insurance. Created in 1978, its mission included offering insurance to professionals who found it increasingly difficult to access affordable malpractice insurance. To my knowledge, there are only three other state-run JUAs in the country that appreciate and affirm the importance of accessible malpractice insurance and provide coverage to licensed midwives practicing in homes and birth centers: Washington, Florida and Texas.

In practice, these pieces of legislation profoundly impact one another. NHCM licensure provides regulation and recognition of midwives, which is key to reimbursement for their services by health insurance providers. However, Medicaid will not reimburse midwives who do not carry malpractice insurance. Private insurers consider midwives without malpractice insurance to be out-of-network providers, and so may or may not reimburse for services, or may not pay midwives in-full for their services. Malpractice insurance through the JUA enables midwives to receive insurance reimbursement, and thus to serve many more families than would otherwise be able to pay for midwifery services out-of-pocket. To dismantle the JUA would threaten the entire structure of accessible midwifery in the state of New Hampshire, because affordable medical malpractice insurance is not otherwise available to independently practicing NHCMS.

To my knowledge, there are two other companies nationwide offering medical malpractice insurance to CPMs and so, by default, to NHCMS as well: Southern Cross Insurance Solutions (www.themidwifeplan.com) and Contemporary Insurance Services (www.cisinsurance.com). In September of 2013, I was able to obtain a quote for malpractice coverage from CIS. Although the first year cost of \$4,976 was arguably reasonable taking into account a "new to practice" discount, thereafter the annual fees increased steeply to \$37,548 by year five. As a midwife, I would count myself extremely lucky to earn \$37,000 per year. Midwifery is not a high-income profession, but rather a low- to middle-income vocation or calling. Midwives have been committed to the services they provide to families for generations, and have accepted modest payment for just as long.

New Hampshire midwives cannot afford malpractice insurance that may cost more than their total annual income. Without the JUA, NHCMS will return to an era of practicing without malpractice insurance, as home birth midwives do throughout much of the rest of the country. What would this look like for New Hampshire? Perhaps the most immediate impact would be the possible closure of New Hampshire's four freestanding birth centers. Without access to medical malpractice insurance, birth centers will no longer be able to depend on consistent insurance reimbursement, and will not receive payment for services rendered to women covered by Medicaid. These four birth centers provide the bulk of out-of-hospital birth services in the state. In fact, New Hampshire is home to perhaps the busiest freestanding birth centers in New England, the Concord Birth Center and The Birth Cottage. In rural states like New Hampshire, birth centers play a critical role in providing out-of-hospital services closer to hospital facilities, enabling women who live remotely to deliver outside of the hospital, but in proximity to emergency services. This is especially important for women having a vaginal birth after cesarean section (VBAC), who by New Hampshire regulations must deliver within 20 minutes of

a hospital if attended by an NHCM. Closure of the state's birth centers will eliminate safe and cost-effective birth options for hundreds of families.

To practice without liability or malpractice insurance also means that a midwife assumes incredible risk in providing essential services to families. In cases of legal action against midwives in other states, midwives have had to declare bankruptcy even in cases where charges were ultimately dropped. No professional should have to give up her assets as a matter of course in providing basic midwifery services – services that are recognized as part of the solution to our country's maternity care crisis. The stress of practicing without malpractice insurance has the potential to change the ways in which midwives practice, and may make midwives' interactions with other healthcare providers and institutions more strained: an uninsured midwife may be exposed to liability when she transfers the care of a patient to a physician or hospital. Transfers of care and collaboration among healthcare practitioners are situations of vulnerability and scrutiny for all involved. Trust and open communication are essential to high-quality patient care and services. However, hospitals and physicians may be less inclined to collaborate on non-emergent patient care with an uninsured midwife, as they may feel they are assuming greater risk. This could effectively limit a patient's access to the care she needs during her pregnancy and birth. Such problems with transfers of care represent a significant obstacle to integrating healthcare, an obstacle which can result in avoidable morbidity and mortality. There have been numerous collaborative efforts to address this issue among physicians, hospitals, and midwives, including in the state of New Hampshire.¹ A lack of access to malpractice insurance for midwives could have the undesirable and unintended effect of potentially jeopardizing patient care in the most critical situations.

With relatively few women having their babies at home and in birth centers with NHCMs in comparison to the state's overall number of births, lawmakers may wonder why investing in the JUA and ensuring midwives' access to malpractice insurance benefits New Hampshire citizens more broadly. The answer to this question lies partly in the role that midwifery care plays in improving maternal and neonatal health outcomes nationwide, and also in the economic calculus of our nation's healthcare system. However, as the state recognized in 1999, people have their babies outside of the hospital – they always have, and will continue to do so. It is the state's acknowledged commitment and responsibility to make out-of-hospital birth safer, with the JUA playing an important role.

Midwifery care improves maternal and neonatal health outcomes. Throughout the course of extended public and academic debate, numerous statistical studies (both directly and using meta-analysis) have shown that having a baby at home or in a birth center is as safe as having a baby in the hospital for healthy, low-risk women.² Choosing to birth with a midwife out of the hospital

¹ Examples include the Northern New England Perinatal Quality Improvement Network home birth to hospital transfer form; ongoing collaborative efforts to coordinate transfers to Concord Hospital among area midwives and hospital staff, based on the Midwives' Association of Washington State's "Smooth Transitions" initiative to improve hospital transports; and the Home Birth Summit's "Best Practice Guidelines: Transfer from Planned Home Birth to Hospital" (www.homebirthsummit.org).

² Cheyney M, Bovbjerg M, Everson C, Gordon W, Hannibal D, Vedam S. Outcomes of Care for 16,924 Planned Home Births in the United States: The Midwives Alliance of North America Statistics Project, 2004 to 2009. *Journal of Midwifery & Women's Health*. 2014;59:17-27; Stapleton SR, Osborne C, Illuzzi J. Outcomes of Care in Birth Centers: Demonstration of a Durable Model. *Journal of Midwifery & Women's Health*. 2013;58:3-14; Olsen O, Clausen J. Planned hospital birth versus planned home birth. *Cochrane Database of Systematic Reviews*. 2012; Janssen PA, Saxell L, Page LA, Klein MC, Liston RM, Lee SK. Outcomes of planned home births with registered midwife versus planned hospital birth with midwife or physician. *Canadian Medical Association Journal*. 2009;181(6-7):377-83; Johnson K, Daviss BA. Outcomes of planned home birth with certified professional

confers a radically lower risk of interventions such as epidurals, vacuum extraction, and cesarean section, all of which carry risks to mother and baby.³ (All of those interventions are also potentially life-saving when used appropriately.) Care by midwives reduces the incidence of preterm birth, the leading cause of neonatal mortality nationwide.⁴ Women receiving care from midwives are more satisfied with their care and are more likely to breastfeed.⁵ Increased rates of breastfeeding lead to healthier infants, drastically decreasing the costs of pediatric care provided to babies during their first year.⁶

Importantly, midwifery care is also an exceptionally affordable alternative to care provided by obstetricians, and out-of-hospital birth is vastly more affordable than hospital birth. As our country continues to navigate through troubled waters when it comes to healthcare spending – which accounted for 17.2% of our GDP or \$2.8 trillion in 2012⁷ – finding safe, preventive, and economical options for healthcare is no longer something to which we can look forward in the future: it is urgent and critical to the present health of our country and its people. We have reached a crisis point, a fact about which citizens and lawmakers of all political persuasions are in agreement. Midwives have a role to play in providing exceptional, cost-effective care. If such calculations are not already underway, I hope the commission will understand the importance of estimating the cost to the state of insuring midwives through the NHMMJUA, compared to the amount saved by access to midwifery services. As out-of-hospital midwifery care continues to grow – as is the trend nationally⁸ and in New Hampshire based on my own personal observations and those of the midwives I know throughout the state – savings to the state will only increase.

New Hampshire has been a leader in supporting midwives for decades, and it is my hope that the state will continue to do so for decades to come. Without the JUA, New Hampshire's residents will no longer have the same level of access to midwifery care and home birth services that they have enjoyed for many generations. Their right and need to deliver children at home, affirmed by the state in 1999, will be in jeopardy. Please renew the state's support for the NHMMJUA, which is the only affordable way for NHCMs to obtain medical malpractice coverage.

Thank you for your consideration,

Ana Rosen Vollmar, NHCM, CPM
NHCM Certification # 1051
(203) 915-8524 / anavollmar@gmail.com

midwives: Large prospective study in North America. *British Medical Journal*. 2005;330:1416; Olsen O. Meta-analysis of the safety of home birth. *Birth*. 1997;24(1):4-13.

³ See studies cited above and also: Sandall J, Soltani H, Gates S, Shennan A, Devane D. Midwife-led continuity models versus other models of care for childbearing women. *Cochrane Database of Systematic Reviews*. 2013.

⁴ Sandall et al., 2013; March of Dimes, PMNCH, Save the Children, WHO. *Born Too Soon: The Global Action Report on Preterm Birth*. Eds CP Howson, MV Kinney, JE Lawn. World Health Organization. Geneva, 2012.

⁵ Cheyney et al., 2014.

⁶ Bartick M, Reinhold A. The Burden of Suboptimal Breastfeeding in the United States: A Pediatric Cost Analysis. *Pediatrics*. 2010;125(5):e1048-56.

⁷ Centers for Medicare and Medicaid Services. *National Health Expenditure Data, 2012*. <http://www.cms.gov/>.

⁸ MacDorman M, Mathews TJ, Declercq E. Trends in Out-of-Hospital Births in the United States, 1990–2012. *CDC and DHHS. NCHS Data Brief No 144:March 2014*.



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Web: <https://nhnpa.enpnetwork.com/>

Dear Ms. Barlow:

In accordance with the Notice published by the Department on November 10, 2014, the following are comments of the New Hampshire Nurse Practitioners Association for the 12/4/14 public hearing regarding the New Hampshire Medical Malpractice Joint Underwriting Association.

With respect to the first question posed in the Notice, there are several options available for Nurse Practitioners in NH, with a wide range of costs and coverages. Many providers in NH are employed and covered by the policy of the institution for whom they work. This shift from the individual obtaining malpractice insurance independently from their employer to institutions self-insuring has increased during the last few years.

In New Hampshire, the JUA furnishes coverage to providers who cannot access the standard market for various reasons. This option is preferable to the Excess and Surplus lines which are not subject to state licensing or regulations.

With respect to the second question, we think that the JUA should remain in place. As you know, this is a time of massive change in the health care delivery system in New Hampshire and nationally. In addition to the implementation of the ACA, for instance, New Hampshire providers are working through the extensive changes brought about by the enactment of Medicaid Managed Care, which still has not been fully rolled out.

Thus, the JUA is an important fallback for NH providers in a time of rapid change, and the NHNPA urges you to do what is necessary to insure the continued existence of this option for malpractice coverage.

Thank you.

Evie Stacy, APRN
President NHNPA

To: New Hampshire Insurance Department
From: New Hampshire Midwives Association
Issue: Continuance of the NH JUA

Recommendation: Some type of risk-sharing program is critically important to our sub-specialty (midwifery and birth centers). We would like the JUA (or a similar program) to continue. About half of New Hampshire Midwives Association members obtain their professional liability insurance through the JUA. No other underwriter is utilized by our membership at this time; the JUA is the ONLY entity providing coverage to New Hampshire Certified Midwives.

- At this point, there are no comparable alternatives to professional liability insurance through the NH JUA. One company offers coverage starting at approximately \$10,000-30,000 annually, representing a conservatively estimated rate increase of 66%- 400%. Another company is working with underwriters to develop a program and quote, but there are no specifics available on this proposed plan. The rate increase is cost-prohibitive.
- Both NH birth centers and providers accepting NH Medicaid are *required by the state to carry malpractice insurance*. Because there is no viable alternative to professional liability insurance through the JUA, the discontinuance of this program would put New Hampshire's 4 birth centers in danger of closing, and women qualified for NH Medicaid would be prevented from choosing home birth. Closure of the birth centers and the elimination of Medicaid-covered homebirth would limit NH women's access to the healthcare of their choice.
- Approximately 2.8% of NH births are attended by New Hampshire Certified Midwives, which is a home/birth center rate significantly higher than the national average. (NH Vital Records, 2013) Closure of the birth centers and discontinuance of Medicaid-funded access to home birth would affect several hundred women annually.
- For each woman who gives birth at home or in a birth center, the healthcare system saves about \$4000. In Washington State, it was estimated by a state-funded study that 2% of births occurring in the care of community midwives creates system-wide savings of \$1.6 million per year. (*Midwifery Licensure and Discipline Program in Washington State: Economic Costs and Benefits* http://www.washingtonmidwives.org/assets/Midwifery_Cost_Study_10---31---07.pdf)

Contact:

Autumn Vergo, NHCM, CPM, RN
New Hampshire Midwives Association
autumn.vergo@truenorthmidwifery.com
603-759-2504

Kate Hartwell, NHCM, CPM
Concord Birth Center
concordbirthcenter@gmail.com

Mary Lawlor, NHCM, LM, CPM
Monadnock Birth Center
mary@monadnockbirthcenter.com

January 30, 2014

Re: Commission to Study the New Hampshire Medical Malpractice Joint Underwriting Association

New Hampshire Insurance Department
21 South Fruit Street
Concord, NH 03301

Dear Commissioner Seigny,

The New Hampshire Midwives Association (NHMA) has compiled this report in response to a request from the Insurance Department for additional information about the accessibility of medical malpractice insurance to the state's out-of-hospital midwives. We hope it will serve to orient the Insurance Department and legislators to out-of-hospital midwifery care in the state, and to demonstrate the importance of affordable and accessible medical malpractice insurance to the state's midwives, a need that has been met by the New Hampshire Medical Malpractice Joint Underwriting Association (NHMMJUA) for many years, and that is not met by the private insurance market. The report contains the following sections:

1. *New Hampshire's Licensed Midwives* – a summary of the midwives licensed in the state, their training and scope of practice, and the benefits and cost-savings of midwifery care
2. *Home Birth and Freestanding Birth Centers in New Hampshire* – an overview of the state's laws regulating home birth and birth centers, and current data on out-of-hospital birth in the state
3. *Midwives and Medical Malpractice Insurance* – an overview of the lack of available malpractice insurance to the state's independent, out-of-hospital midwives
4. *Midwifery in New Hampshire Without Medical Malpractice Insurance* – a summary of the anticipated impact of loss of access to malpractice insurance on midwifery services in the state

New Hampshire's midwives need reliable access to affordable medical malpractice insurance. Without such access, midwives anticipate the closing of the state's freestanding birth centers; dramatically reduced access to midwifery services since insurance reimbursement will be limited; and the assumption of extreme personal risk by midwives who continue to practice without medical malpractice insurance. New Hampshire has been a leader in supporting midwives for decades, and it is our hope that the state will continue to do so for decades to come.

We are open to creative solutions, and hope to work with you and the legislature to achieve accessible medical malpractice insurance options so that New Hampshire's families can continue to access the midwifery care they have enjoyed for many generations.

Sincerely,

Cynthia A. Owen, CPM, NHCM
President, New Hampshire Midwives Association
Administrator, Concord Birth Center
(603) 228-8710 / cindymidwife@gmail.com

A Report on Midwifery and the NHMMJUA

From the New Hampshire Midwives Association

Report prepared by Ana Vollmar, CPM, NHCM (anavollmar@gmail.com)

1. NEW HAMPSHIRE'S LICENSED MIDWIVES

New Hampshire is home to 30 midwives providing maternity care services in freestanding birth centers and homes. All of these 30 midwives carry two certifications – that of Certified Professional Midwife (CPM) and New Hampshire Certified Midwife (NHCM) – and are the state's primary home birth and out-of-hospital birth providers, licensed and regulated under RSA 326-D. Additionally, there is one Certified Nurse Midwife (CNM) in the state providing home birth services, with other CNMs working in the state's hospitals. At any given time, approximately one-third of these out-of-hospital midwives carry insurance through the NHMMJUA, including all of the midwives who own and work in the state's freestanding birth centers, where more than half of New Hampshire's out-of-hospital births occur. Midwives who choose not to carry insurance do so for a variety of reasons, including financial ones, as the cost of insurance may represent a large proportion of their income in cases of midwives with small practices.

LICENSURE, SCOPE OF PRACTICE, EDUCATION, AND TRAINING OF NEW HAMPSHIRE'S MIDWIVES

Certified Professional Midwife (CPM)

CPMs are nationally certified by the North American Registry of Midwives, and specialize in births occurring outside of the hospital in homes and freestanding birth centers. CPMs are independent healthcare providers in private practice, and do not work in hospitals. They care for healthy women throughout pregnancy, birth, and the postpartum period, and additionally are trained to care for healthy newborns for up to 6 weeks.

- Education and training: CPMs either attend a midwifery school accredited by the Midwifery Education Accreditation Council (recognized by the US Department of Education) and complete extensive clinical training, which lasts on average 3 years, or complete the Portfolio Evaluation Process, a comprehensive competency-based assessment administered by the North American Registry of Midwives rooted in the apprenticeship model of education.
- Licensure/certification: Regardless of educational route, at the completion of their training all CPMs must pass the same national exam administered by North American Registry of Midwives. Each state then determines its own licensure laws regarding midwifery, and whether or not it will accept the CPM certification. Currently, 25 states either accept the CPM credential or use it as a foundation for state licensure, as is the case in New Hampshire.

New Hampshire Certified Midwife (NHCM)

NHCMs are state-licensed midwives who attend home births and births in freestanding birth centers. Like CPMs, NHCMs are independent healthcare providers in private practice, and do not work in hospitals.

- Education and training: In order to become an NHCM, a midwife must first become a CPM and then apply to become an NHCM.
- Licensure: NHCMs were first licensed in 1999 according to RSA 326-D, which outlines their licensure and regulation by the Midwifery Council and details their scope of practice. In order to become licensed, NHCMs take a state-administered exam focusing on knowledge of state regulations for midwifery practice.

Certified Nurse Midwife (CNM)

CNMs are state-licensed midwives and advanced practice nurses, providing gynecological care for women in addition to care during pregnancy and birth. Most CNMs are trained and practice in hospitals, where they work in larger medical practices. Only a small number of CNMs are in independent practice, and even fewer attend births outside of the hospital in homes and freestanding birth centers.

- Education and training: CNMs are first trained as Registered Nurses, and then study for a Master's degree in midwifery.
- Licensure: CNMs are licensed according to RSA 326-B, the Nurse Practice Act.

THE MIDWIVES MODEL OF CARE

Midwives working outside of the hospital offer a model of care that approaches pregnancy and birth as normal life processes rather than states of illness or disease. **Midwives offer the medical standard of care during pregnancy, and go beyond it, offering personalized and continuous care for women throughout their pregnancy, birth, and postpartum period:**

- Midwives monitor the physical, psychological, and social well-being of the mother throughout the childbearing cycle.
- Midwives provide the mother with individualized education, counseling, and prenatal care, continuous hands-on assistance during labor and delivery, and postpartum support.
- Midwives minimize technological interventions.
- Midwives identify and refer women who require obstetrical attention.

BENEFITS OF MIDWIFERY CARE

The midwifery model of care improves maternal and neonatal health outcomes.

- Throughout the course of extended public and academic debate, numerous studies have shown that having a baby at home or in a birth center is as safe as having a baby in the hospital for healthy, low-risk women.¹
- Choosing to birth with a midwife out of the hospital confers a radically lower risk of interventions such as epidurals, vacuum extraction, and cesarean section, all of which carry risks to mother and baby.² (All of those interventions are also potentially life-saving when used appropriately.)
- Care by midwives reduces the incidence of preterm birth, the leading cause of neonatal mortality nationwide.³
- Women receiving care from midwives are more satisfied with their care and are more likely to breastfeed.⁴ Increased rates of breastfeeding lead to healthier infants, drastically decreasing the costs of pediatric care provided to babies during their first year.⁵

¹ Cheyney M, Bovbjerg M, Everson C, Gordon W, Hannibal D, Vedam S. Outcomes of Care for 16,924 Planned Home Births in the United States: The Midwives Alliance of North America Statistics Project, 2004 to 2009. *Journal of Midwifery & Women's Health*. 2014;59:17-27; Stapleton SR, Osborne C, Illuzzi J. Outcomes of Care in Birth Centers: Demonstration of a Durable Model. *Journal of Midwifery & Women's Health*. 2013;58:3-14; Olsen O, Clausen J. Planned hospital birth versus planned home birth. *Cochrane Database of Systematic Reviews*. 2012; Janssen PA, Saxell L, Page LA, Klein MC, Liston RM, Lee SK. Outcomes of planned home births with registered midwife versus planned hospital birth with midwife or physician. *Canadian Medical Association Journal*. 2009;181(6-7):377-83; Johnson K, Daviss BA. Outcomes of planned home birth with certified professional midwives: Large prospective study in North America. *British Medical Journal*. 2005;330:1416; Olsen O. Meta-analysis of the safety of home birth. *Birth*. 1997;24(1):4-13.

² See studies cited above and also: Sandall J, Soltani H, Gates S, Shennan A, Devane D. Midwife-led continuity models versus other models of care for childbearing women. *Cochrane Database of Systematic Reviews*. 2013.

³ Sandall et al., 2013; March of Dimes, PMNCH, Save the Children, WHO. *Born Too Soon: The Global Action Report on Preterm Birth*. Eds CP Howson, MV Kinney, JE Lawn. World Health Organization. Geneva, 2012.

⁴ Cheyney et al., 2014.

COST-SAVINGS OF MIDWIFERY CARE

Midwifery care is an exceptionally affordable alternative to care provided by obstetricians, and out-of-hospital birth is vastly more affordable than hospital birth. A 2013 article in the *New York Times*, “American Way of Birth, Costliest in the World,” even profiled New Hampshire when describing the spiraling cost of birth in the United States.⁵ Midwifery care saves money and improves outcomes. As out-of-hospital midwifery care continues to grow – as is the trend nationally⁷ and in New Hampshire – savings to the state will only increase.

- In New Hampshire, insurers are typically charged a global midwifery fee of \$3,000 for a home birth, which includes all prenatal, birth, and postpartum care. Insurers reimburse NHCMS at rates ranging from \$1,200 (Medicaid) to \$1,800 (Anthem and Harvard Pilgrim) to \$2,000 (other private insurers). CNMs are reimbursed at a rate of \$1,800 to \$2,200 by Medicaid, and \$2,200 to \$2,900 by private insurers.
- For a birth at a New Hampshire birth center, insurers are charged \$3,000 to cover prenatal, birth, and postpartum care, plus a \$2,500 facility fee. As above, insurers reimburse \$1,200 to \$2,900 for midwifery services, and pay \$600 (Medicaid) to \$2500 (private insurance) for the facility fee.
- Nationally, for a vaginal birth in the hospital, insurers are charged on average \$32,000, and pay \$18,300.⁸ This cost does not cover prenatal or postpartum care.
- Nationally, for a cesarean section, insurers are charged on average \$51,000 and pay \$27,800.⁸ This cost does not cover prenatal or postpartum care.

2. HOME BIRTH AND FREESTANDING BIRTH CENTERS IN NEW HAMPSHIRE

For generations, babies have been born at home in New Hampshire. In 1999, when NHCMS were first licensed, the statute (RSA 326-D) included the following statements of purpose (emphasis added):

- I) The general court finds that **the practice of midwifery has been a part of the culture and tradition of New Hampshire since colonial days** and that it is in the public interest to remove impediments to the practice of midwifery.
- II) For personal and economic reasons some New Hampshire citizens will have home births. **It is the intent of the general court to preserve the rights of women to deliver children at home, to remove obstacles to safe out-of-hospital deliveries, and to assure quality care.**

NEW HAMPSHIRE LAWS RELATING TO MIDWIFERY AND PLACE OF BIRTH

New Hampshire has long been a national leader in supporting the right of its citizens to choose where, how, and with whom their babies are born. Over the years, the state has passed three critical pieces of legislative action relating to midwifery and birth:

- RSA 326-D: New Hampshire’s statute licensing NHCMS in 1999. This law was one of the first in the country, and since then has been used as model legislation in other states seeking to license midwives attending out-of-hospital births.

⁵ Bartick M, Reinhold A. The Burden of Suboptimal Breastfeeding in the United States: A Pediatric Cost Analysis. *Pediatrics*. 2010;125(5):e1048-56.

⁶ Rosenthal, E. “American Way of Birth, Costliest in the World.” *The New York Times*, June 30, 2013. <http://www.nytimes.com/2013/07/01/health/american-way-of-birth-costliest-in-the-world.html>

⁷ MacDorman M, Mathews TJ, Declercq E. Trends in Out-of-Hospital Births in the United States, 1990–2012. CDC and DHHS. NCHS Data Brief No 144:March 2014.

⁸ Truven Health Analytics. *The Cost of Having a Baby in the United States*. January, 2013.

<http://transform.childbirthconnection.org/wp-content/uploads/2013/01/Cost-of-Having-a-Baby1.pdf>

- Available at: <http://www.gencourt.state.nh.us/rsa/html/xxx/326-d/326-d-mrg.htm>
- **RSA 151:2 and Administrative Rules He-P 810:** New Hampshire's statute and rules licensing independent, freestanding birthing centers, adopted in 1993, thereby expanding its citizens' rights and access to safe out-of-hospital birth.
Available at: <http://www.dhhs.nh.gov/oos/bhfa/documents/he-p810.pdf>
 - **RSA 415:6-I:** Passed in 2006, this statute mandates the reimbursement of midwifery services, including home birth and birth in licensed health care facilities like independent birth centers, by all insurance providers covering maternity care. **This law ensures that women of all economic classes are able to access midwifery care, enabling midwives to serve a broad spectrum of families, and reflecting the state's 1999 commitment to "remove obstacles to safe out-of-hospital deliveries."**
Available at: <http://www.gencourt.state.nh.us/rsa/html/XXXVII/415/415-6-I.htm>

MIDWIVES AND THE NHMMJUA

When the NHMMJUA was created in 1978, its mission included offering insurance to professionals who found it increasingly difficult to access affordable malpractice insurance. Although NHCMS were not yet licensed in 1978, the JUA served as a critical foundation for building New Hampshire's out-of-hospital maternity care resources once NHCMS became licensed, allowing NHCMS to integrate into the state's health care system to a degree unmatched in many other states:

- NHCMS with malpractice insurance are reimbursed by Medicaid.
- NHCMS with malpractice insurance may be designated in-network providers with most private health insurers.
- Midwives attending births at freestanding birth centers must carry malpractice insurance.
- Licensed freestanding birth centers receive modest facility fees from insurers, ranging from \$600 (Medicaid) to \$2500 (private insurance), which support the birth centers' operations.

HOME BIRTH IN NEW HAMPSHIRE

Over the past 15 years, the annual number of home births in the state has remained fairly steady, and currently accounts for just under half of all out-of-hospital births. **Approximately two-thirds of all home birth consumers use insurance to pay for their care**, with the remaining paying out of pocket (see the accompanying New Hampshire Out-of-Hospital Birth Fact Sheet). Nationally, 1.36% of all births occur outside the hospital, while in New Hampshire, over 2% of all births occur outside the hospital.

FREESTANDING BIRTH CENTERS IN NEW HAMPSHIRE

As of January, 2015, there are four freestanding birth centers in New Hampshire: the Concord Birth Center in Concord; the Monadnock Birth Center in Swanzey; the Birth Cottage in Milford; and the Seacoast Family Birth Retreat, Stratham. These birth centers serve as regional hubs for midwifery care. Over the past 15 years the number of babies born in birth centers has risen dramatically, and in 2013 surpassed the home birth rate for the first time (see the New Hampshire Out-of-Hospital Birth Fact Sheet). **Nearly 90% of all births in New Hampshire's birth centers are paid for with insurance: 65% by private insurance, and 23% by Medicaid.** This ratio of payment sources is comparable to that of births occurring in NH hospitals, and illustrates how critical insurance reimbursement is to the economic viability of birth centers. **Without access to medical malpractice insurance, reliable revenue for birth centers will disappear, leading to their closure.**

3. MIDWIVES AND MEDICAL MALPRACTICE INSURANCE

Obstetrics is one of the most litigated professions, and it is difficult for independent, licensed midwives practicing in homes and freestanding birth centers to obtain medical malpractice insurance. For NHCMS and out-of-hospital CNMs in New Hampshire, the NHMMJUA is currently the only affordable option for obtaining malpractice insurance.

ALTERNATIVES FOR MIDWIVES TO THE NHMMJUA

Nationwide, there are only two companies offering medical malpractice insurance to CPMs/NHCMS and CNMs who work independently in freestanding birth centers or in homes:

1. Contemporary Insurance Solutions (www.cisinsurance.com): A quote for malpractice coverage from CIS for an individual home birth NHCM had a first-year cost of \$4,976, and increased to \$37,548 annually by year five.
2. Southern Cross (www.themidwifeplan.com): A preliminary estimate for malpractice coverage for an NHCM birth center group practice started at \$9,000 annually. Although the cost by year five is unknown, if we assume a 20% increase each year (an increase typical of insurance midwives have purchased from the NHMMJUA), then by year five its cost could be as much as \$18,660. A final quote from Southern Cross is pending.

CIS is not affordable for most midwives. While Southern Cross may offer a more reasonable option for malpractice insurance, it is still only a single company nationwide. **If for any reason Southern Cross stopped writing policies for midwives, or if its rates were to increase substantially, New Hampshire's out-of-hospital midwives would no longer be able to obtain insurance coverage in the absence of the NHMMJUA.**

Midwifery is not a high-income profession, but rather a low- to middle-income vocation or calling. The annual income for out-of-hospital midwives in the state ranges from \$21,000 to \$63,000 for birth center owners. Midwives have been committed to the services they provide to families for generations, and have accepted modest payment for just as long. **New Hampshire midwives cannot afford malpractice insurance that may cost anywhere from 30% to more than 100% of their total annual income. As small business owners, midwives work hard to plan for the future, and cannot afford uncertainty in being able to obtain insurance coverage.** This is especially true for birth center owners who have made multi-year investments in developing significant infrastructure for their businesses, including property and building improvements to meet DHHS requirements.

MEDICAL MALPRACTICE INSURERS THAT HAVE DECLINED COVERAGE TO CPMs/NHCMS

The following major companies have declined to cover CPMs/NHCMS for the following reasons:

1. Medical Mutual Insurance Company of Maine – does not provide insurance to midwives in independent practice, or to CPMs/NHCMS
2. Medical Protective Company – does not write stand-alone policies for non-physician providers, and does not cover any midwives who are not nurse practitioners or physician assistants (no coverage for CPMs or NHCMS)
3. Lexington Insurance/AIG – does not write policies for CPMs or NHCMS
4. Coverys/ProSelect Insurance – does not write policies for CPMs or NHCMS

4. MIDWIFERY IN NEW HAMPSHIRE WITHOUT MEDICAL MALPRACTICE INSURANCE

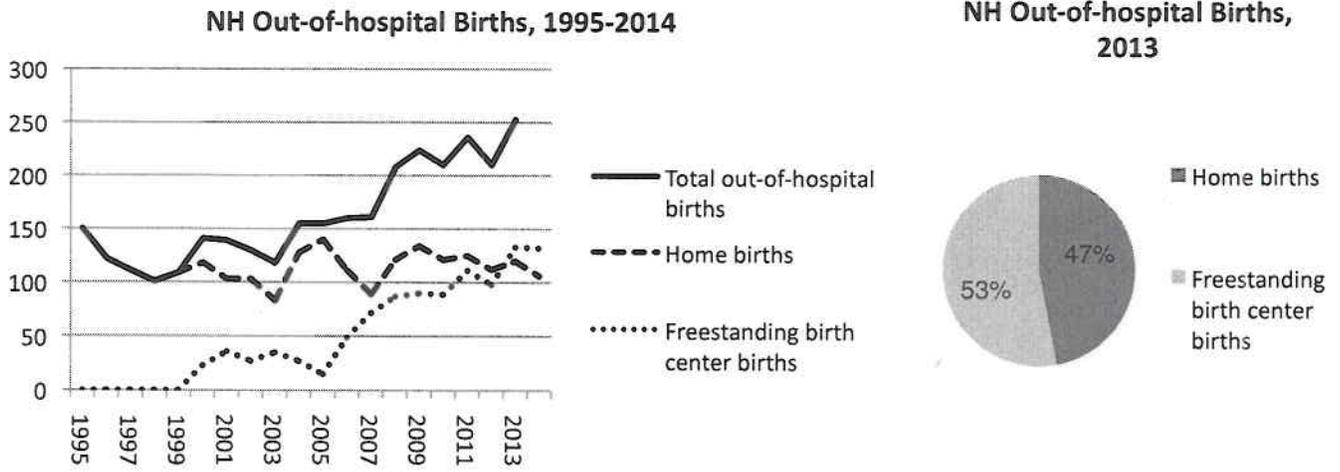
Without access to affordable medical malpractice insurance, the face of midwifery in New Hampshire will change, threatening the state's hard-won structure of accessible midwifery care. NHCMS and out-of-hospital CNMs will return to an era of practicing without malpractice insurance, as home birth midwives do throughout much of the rest of the country. What would this look like for New Hampshire?

- **New Hampshire's freestanding birth centers may close.** Without access to medical malpractice insurance, birth centers will no longer be able to depend on consistent insurance reimbursement, and will not receive payment for services rendered to women covered by Medicaid. Birth centers provide more than half of all out-of-hospital birth services in the state, and are some of the busiest in New England. In rural states like New Hampshire, birth centers play a critical role in providing regional out-of-hospital services closer to hospital facilities, enabling women who live remotely to deliver outside of the hospital, but in proximity to emergency services. This is especially important for women having a vaginal birth after cesarean section (VBAC), who by New Hampshire regulations must deliver within 20 minutes of a hospital if attended by an NHCM. **Closure of the state's birth centers will eliminate safe and cost-effective birth options for hundreds of families.**
- **Medicaid will stop reimbursing out-of-hospital midwives for their services.** The women who are most in need of midwifery care will not be able to access it.
- **Private insurers will classify midwives without malpractice insurance as out-of-network providers, and so may not reimburse for services, or may not pay midwives in-full for their services.** Women who want to use an NHCM as their maternity care provider may find their midwife's services are no longer covered by their insurance.
- **Access to out-of-hospital midwifery services will be largely limited to families who can afford to pay out-of-pocket.** With the insurance mandate of the Affordable Care Act, many midwives have noticed a decrease in patients paying out-of-pocket, a trend that is likely to continue. When families contribute their disposable income to health insurance that does not cover their midwife, they are less likely to pay out-of-pocket for midwifery services, and instead will opt for in-hospital care by covered providers (care that on average is more costly for the insurer).
- **Practicing without liability or malpractice insurance means that a midwife assumes incredible personal risk in providing essential services to families.** In cases of legal action against midwives in other states where malpractice insurance is not readily available, midwives have had to declare bankruptcy even in cases where charges were ultimately dropped. No professional should have to give up her assets as a matter of course in providing basic midwifery services – services that are recognized as part of the solution to our country's maternity care crisis.

WHAT MIDWIVES NEED

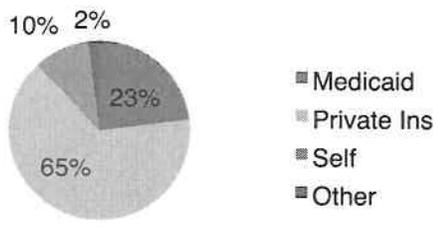
New Hampshire's out-of-hospital midwives need reliable access to affordable medical malpractice insurance. We are open to creative solutions, and hope to work with the Insurance Department and the legislature to achieve accessible medical malpractice insurance options so that New Hampshire's families can continue to access the care they have enjoyed for many generations.

NEW HAMPSHIRE OUT-OF-HOSPITAL BIRTH FACT SHEET*

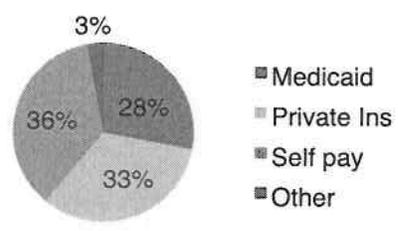


- In 2013, New Hampshire out-of-hospital births accounted for just over 2% of all births in the state, higher than the 2012 national average of 1.36% occurring outside of the hospital.
- Since 1999 when NHCMs were first licensed in NH, the rate of out-of-hospital birth has more than doubled.
- Over the past 15 years, the annual number of home births in the state has remained fairly steady, while the number of babies born in birth centers has risen dramatically. This increase in births at the state's freestanding birth centers accounts for New Hampshire's rising out-of-hospital birth rate, and in 2013 the number of birth center births surpassed the number of home births for the first time.

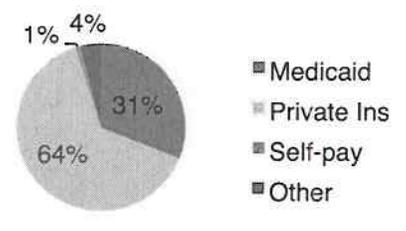
NH Freestanding Birth Center Payment Sources, 2013



NH Home Birth Payment Sources, 2013



NH Hospital Birth Payment Sources, 2012



- Rates of self-pay have fallen as NHCMs have been reimbursed for their services by insurance companies. Nearly 90% of all births in New Hampshire's freestanding birth centers are paid for with insurance: two-thirds by private insurance, and nearly a quarter by Medicaid.
- Freestanding birth centers are substantially more dependent on insurance reimbursement than home birth practices: 36% of all home births are paid for out-of-pocket, compared to only 10% of all birth center births.
- The ratio of payment sources for birth centers is comparable to that of births occurring in NH hospitals.

* All data are from the NH Vital Records public database, with the most recent available year's data used in all instances.