ATTACHMENT 4

HB 489

Chapter 293:2, Laws of 2014

An Act establishing a commission to study the New Hampshire medical malpractice joint underwriting association

FINAL REPORT

The above-named Commission was charged with the task of studying the New Hampshire Medical Malpractice Joint Underwriting Association (the JUA) and making recommendations for proposed legislation concerning its future, form, and function. This is the second Commission convened with this same charge. The previous Commission (SB 170, Chapter 201:2, Laws of 2011) recommended the formation of a further Commission. (The SB 170 Commission's findings and recommendations are attached.)

It is the finding of this Commission that legislation cannot be drafted or proposed until two threshold questions are addressed which require public input this Commission did not have time to obtain. The first is whether conditions continue to exist to support the conclusion that medical malpractice coverage is not readily available in the voluntary market. The second question is, if such coverage is not readily available in the voluntary market, then what form of risk sharing plan, if any, is supported by the public interest? These questions are rooted in RSA 404-C, which sets out the conditions under which a government-sponsored market facility, that relies on financial support from assessments on the insurance industry, can be created in order to ensure access to coverage.

Until there is a finding that medical malpractice insurance is not readily available in the voluntary market, and there is a public interest that supports state action to make this coverage available, further legislative action is premature.

The Commission finds however, that whether or not there is a continuing need for a risk sharing plan, legislative action is required in the 2015 session to addresses the disposition of the JUA. The administrative rule that creates the JUA and its Board expires in January of 2017. The JUA is not a corporation and exists only by virtue of the administrative rule. Without legislative direction, the Commissioner of Insurance cannot act to reauthorize the JUA. The JUA will cease to exist, and the Commissioner will, of necessity, need to begin to take steps to protect policyholders and claimants beginning in 2015, to ensure an orderly winding down of JUA business under court supervision.

The Commission, therefore, recommends that the Insurance Commissioner conduct a public hearing and invite insurance companies and interested parties to present testimony and evidence addressing the questions listed below. The Commission recommends that the Insurance Commissioner issue a report of his findings and recommendations to the leadership of the House of Representatives and Senate,

based on testimony presented at the hearing, as well as data obtained from the JUA or from any other sources, addressing the following questions.

(1) Is medical malpractice coverage readily available in the voluntary market?

(2) If such coverage is not readily available in the voluntary market, what form of risk sharing plan to make coverage available on a guaranteed issue basis is supported by the public interest?

If the Commissioner, after the public hearing, finds that medical malpractice coverage is sufficiently available in the voluntary market, then the Commissioner's report should include recommendations for legislation providing for an orderly winding down of the JUA.

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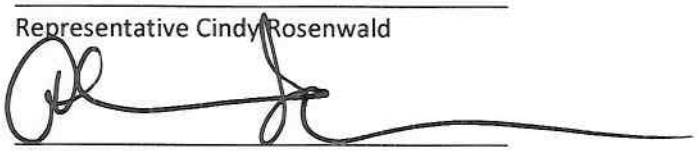

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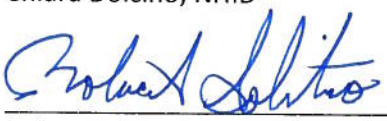

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