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COMMENTS FOR MEDICAL MALPRACTICE HEARING ON MARKETPLACE COMPETITION

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This is the twelfth hearing relative to the question of competition in the physician, surgeon and hospital medical malpractice insurance market.

At the first such hearing, held in mid-July, 2005, the presentation covered several topics, including:

- The applicable sections of RSA 412 dealing with competitive markets and the ramifications for insurers on the rate filing process if the commissioner finds that an insurance market is noncompetitive
- Key attributes that a market should possess in order to conclude that it is competitive
- Information on the medical malpractice insurance market in New Hampshire, including:
 - Market shares and concentrations among insurers
 - Market financial performance
 - Pricing of products
- Suggested rationale to use in concluding that this particular market is not competitive, within the context and constraints of RSA 412.

At last year's hearing, held on November 16, the presentation focused on updating information about the physician, surgeon and hospital market, and offered our perspective that there was little information in the updated data to suggest that you should reach a different conclusion. Also noted last year was the impending closure of the New Hampshire Medical Malpractice JUA.

Following the November hearing and after considering my comments as well as comments received from others at the hearing and later by written responses, the Hearing Officer, Deputy Commissioner Feldvebel, concluded that a competitive market for physician, surgeon and hospital medical malpractice does not exist in NH and issued order (Ins 15-063-AP), meaning that prior approval rate filing procedures and standards

as outlined in RSA 412:16 would apply for a one year period, starting November 24, 2015.

Because that ruling expires as of November 23, 2016, it is time to make a new determination, after holding a hearing, as to whether this market lacks a reasonable degree of competition. If you conclude that a competitive market for physician, surgeon and hospital medical malpractice now exists in New Hampshire, then the applicable rates and rating rules will be filed on a use-and-file basis. Most importantly, in accordance with RSA 412:15 I.(a), the department would not be able to disapprove a rate for being excessive.

My comments today will focus on (1) updating the information presented at prior hearings with more current statistics and (2) discussing any changes in the NH market for P & S & H that have occurred which might cause you to now reach a different conclusion.

1. How has the marketplace changed with regards to regulated insurers and their policy and premium writings?

- a. Exhibit 1a shows a list of companies and direct written premium amounts for all kinds of medical malpractice insurance, for calendar year 2015.

Note that:

- i. Overall, the size of the market decreased by 2.4%, from \$41.3 million to \$40.3 million. Surplus lines carriers experienced a larger decrease (4.8%) in written premium than the regulated market (2.1%). There was a slight increase (1.4%) among risk retention groups.
- ii. ProSelect continued as the lead writer of medical malpractice insurance in New Hampshire. After two years of decreasing written premium, ProSelect experience a 0.7% increase in premium in 2015. Its market share ticked up as well to just below 24%. It is important to note that ProSelect wrote 52% more premium than the next largest writer in the New Hampshire market. This number grew from 37% a year ago.
- iii. Medical Mutual of Maine continued to be the second largest writer in New Hampshire despite a 9.2% decrease in written premium. This continues a pattern for the company over the last few years where they alternate gains and losses of about \$0.5 million of premium each year. Their market share is back slightly below 16% which is where it was in 2013.
- iv. Medical Protective Company claims the greatest increase in written premium from 2014 among top ten writers in the state.

Med Pro moved into the top three writers, increasing premium by 18.1% to \$3.1 million.

- v. Combined 2015 market share for the top three companies is 47.3%. The top 10 companies wrote 76.7% of the business. The first value as increased slightly from a year ago and the second has decreased. There remains a substantial concentration in premium among a limited number of carriers.
- vi. The HHI (Herfindahl-Hirschman Index) for 2015, excluding the JUA, is 1,146 vs 1,162 in 2014. However, if we consider regulated companies only in the calculation, the results yield an HHI of 2,194 for 2015 vs 2,247 for 2014.

The US Justice Department uses the HHI value to describe market concentration. An index over 2,500 indicates a highly concentrated market. An index between 1,500 and 2,500 indicates moderate concentration, and an index below 1,500 indicates an unconcentrated market.

- b. Exhibit 1-b shows more information about the largest regulated insurers writing medical malpractice in NH. Specifically we have indicated whether companies are regional or national in scope and have shown the total amount of medical malpractice insurance each of them wrote in New Hampshire versus total New Hampshire premium. We also show medical malpractice premium and total premium written countrywide. Please note that with the exception of ProSelect and Medical Mutual of Maine, and of course, the JUA, medical malpractice insurance writings in NH are quite inconsequential to most insurers.
- c. Exhibit 1-c shows companies that have entered or exited the market since 2005. For the purposes of this exhibit, companies whose market share has dramatically been reduced from 2005 levels (by 80% or more) are included in the category of insurers who have left the New Hampshire medical malpractice market. Of note here is the arrival of ProAssurance Specialty Insurance Company which entered the market in 2015 claiming 3.2% of the market.

2. Has there been any change in rate filing activity among the leading writers?

- a. Exhibit 2-a is an updated comparison chart which shows current pricing for selected classifications of physicians among the three largest regulated insurers expected to write premium in 2016. There is variance among insurers as to the pricing of this product. Medical Protective appears to have lower rates for more risky classes relative to the other insurers and slightly higher rates than competitors for less risky codes.

- b. Exhibit 2-b shows a rate history over an 8 year period. The pace of rate change activity has decreased over the last few years; there has been only 1 rate change among the 3 companies in the last 3 years. Most rate revisions implemented in the early part of this 8-year period had been “across-the-board” changes and not focused on specific classes or categories of risk. This has continued to be the case with more recent changes, although not uniformly so.
- c. In addition to their own data, many companies continue to rely on each other’s filings to justify or produce their selected and filed loss costs. Non-New Hampshire data is used to supplement New Hampshire experience in each of the rate filings for such things as trend and loss development, increased limit factors and classification relativities. Even though this is an appropriate practice from an actuarial ratemaking perspective, it does further support the need to ensure that the data and methodology used by the market leaders is appropriately reviewed by the regulator.

3. How has the experience changed since last year’s hearing?

- a. Exhibits 3a-3c are charts which show financial performance for the past 26 years, ending in 2015. This data comes from the NAIC and excludes the JUA.
 - i. Exhibit 3a: New Hampshire experience in 2015 showed an estimated aggregate combined ratio of 108.8% which suggests the market as a whole experienced an underwriting loss. This follows two years of profitability. The 2015 loss ratio in New Hampshire was 48.6% which was slightly lower than in 2014 (49.2%). This was offset by a slight increase in LAE ratio. There was a large increase in the estimate of the market-wide expense ratio which increased from 14.8% in 2014 to 28.4% in 2015. This appears to suggest an anomaly in 2014 as the 2015 value is consistent with the 10 year average.
 - ii. Exhibit 3b: Countrywide direct underwriting results showed continued profitability in 2015. However, the estimated aggregate combined ratio of 98.4% was the highest in 11 years. On a countrywide basis, the results are obviously much less volatile than New Hampshire. Countrywide, medical malpractice has been profitable since 2005, averaging about an 87% combined ratio. The 2015 CW loss ratio was 41.6% which was considerably lower than in 2014 (50.9%) but as mentioned above the estimated expense ratio was markedly higher.

- iii. Exhibit 3c: This chart shows New Hampshire along with 2 other states in the region. It shows that even though the results for an individual state can be quite volatile, over the long term they broadly follow the same cycle as exhibited in countrywide results.
- b. Exhibit 4 shows 2015 direct loss ratios for the leading writers in New Hampshire, Maine and Vermont. Insurers in New Hampshire on average fared worse than in ME and VT, however, the results for an individual small state can be rather volatile from year to year, and heavily influenced by large reserve changes or settlements.
- c. Countrywide medical malpractice insurance trends have an important influence on the NH market. For a perspective on the countrywide market we look to the publication Medical Liability Monitor and specifically its October issue which focuses on the state of the market reporting on trends in rates and coverage. Some important points from the current issue's feature article "Do Still Waters Still Run Deep?" follow:
 - i. The market remains soft for several possible reasons.
 - ii. Market is still benefiting from tort reforms of a decade ago that have generally been upheld in courts.
 - iii. Positive changes in the public's perception of the physician-defendant in malpractice suit. Drop in claims frequency and fewer large-dollar jury verdicts.
 - iv. Increased in patient safety initiatives among other causes for continued historic lower claim frequencies.
 - v. Consolidation of medical providers continues resulting in less "first tier" coverage in the insurance market.
 - vi. Larger practices have more risk management options including possibility of forming captives or RRGs.
 - vii. Nationally, as in New Hampshire, there are very few companies making rate adjustments. Nationwide the average rate change in 2016 is -0.1%
 - viii. The Northeast region saw a 0.8% average rate increase driven by Rhode Island and Pennsylvania.
 - ix. The effects of the Affordable Care Act are not yet known (as is the fate of the law itself). The ACA supported shift from fee-for-service to value-based reimbursement could have an impact on the medical malpractice market.

Conclusion

The conclusion I draw from all of this is that, while the New Hampshire medical malpractice insurance market may be somewhat less concentrated than in prior years, there hasn't been a significant change to the market in the last year, in any of the three categories that affected your decision in the past. Further, from my perspective, requiring companies to submit such rate filings under a prior approval basis has not impacted any company's ability to implement actuarially justified changes at the levels they wanted and when they wanted.

Additionally, the recent closing of the JUA will have an effect on the market as these insureds seek other coverage. Logically, the market will be less competitive without the availability of the JUA which often had the lowest rates.

For these reasons, it seems reasonable to conclude again that the market has a number of attributes associated with a non-competitive market and that New Hampshire would be better served to have the rate filings submitted by regulated insurers reviewed and processed on a prior approval basis.