STATE of NEW HAMPSHIRE
INSURANCE DEPARTMENT

ORDER
Competitive Market Determination
Regarding Medical Malpractice Insurance
for Physicians, Surgeons and Hospitals
Docket No.: Ins 14-027-AP

Introduction

1. Title XXXVII, Chapter RSA 412 contains the provisions regulating forms and rates for property and casualty insurance.

2. RSA 412:13 states that a competitive market is presumed to exist unless the commissioner, after conducting a hearing, determines that a reasonable degree of competition does not exist in the market and issues a ruling to that effect that is valid for one year from date of issue.

3. The provisions of RSA 412:14 delineate the relevant information, analytical systems and other sources the commissioner may consider when making this determination.

4. RSA 400-A:17 provides the commissioner with the authority to hold hearings for any purpose within the scope of this Title (XXXVII) as he may deem advisable or if required by any provision of this Title (XXXVII).

5. An October 17, 2014 Order of Public Hearing scheduling a hearing on the matter for November 19, 2014 was sent by certified mail to the top nine (9) licensed writers of medical malpractice insurance in New Hampshire and known interested parties; and a legal notice was published in twelve (12) New Hampshire daily newspapers on November 5th and November 12th.

Findings

1. Testimony presented at the hearing by Sally MacFadden, the Department's Property and Casualty Actuary, focused on updated data and exhibits that address the following considerations in RSA 412:14 II:

a. The extent to which the largest insurer groups control the insurance marketplace;
b. Whether the total number of companies writing the form of insurance in this state is sufficient to provide multiple options to the public;

c. The extent to which insurer entries and exits, considered over several years, suggest the presence or lack of entry or exit barriers or both;
d. The degree to which the insurance products offered to consumers are homogeneous in nature and thus comparable;
e. The availability of coverage in all geographic areas;
f. The trend in price levels for each type of insurance;
g. The profitability of each form of insurance over a period of several years;
h. The level of knowledge of market participants and the extent to which comparative pricing information has been made readily available to consumers;
i. The extent to which the market for each type of insurance is growing.

Ms. MacFadden presented evidence showing that rates in New Hampshire are increasing and that the market remains highly concentrated for admitted carriers based on the Herfindahl-Hirschman Index (HHI). She testified that although there is slightly less concentration than in previous years, the number of admitted carriers is limited and the surplus lines market remains active; in addition, many companies continue to rely on each other's filings to justify or produce their selected and filed loss costs, supporting the need to ensure that the data and methodology is appropriately reviewed. Ms. MacFadden testified that 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. Written testimony and exhibits were provided at the hearing which support the conclusion that there has not been significant change to the New Hampshire market in the last year with respect to the considerations in RSA 412:14 II, and that there is not a reasonable degree of competition in the medical malpractice insurance marketplace.

2. Testimony was also presented at the hearing by Joel D. Whitcraft, Vice President and Actuary at Medical Protective. Mr. Whitcraft testified that the HHI has declined over a 3 year period. He offered evidence from the Department of Justice that provides alternative interpretations of the level of competition indicated by the HHI index. He testified that the level of filing submissions for new products and rate/rule modifications provide evidence that carriers are competing to differentiate themselves in the market. Mr. Whitcraft testified that the New Hampshire Market is represented by a significant number of agents and brokers that represent multiple carriers, and that the relatively modest spread in physician rates is indicative of a competitive market. Mr. Whitcraft testified that allowing rate and rule filings to be made on a 'use and file' basis like other commercial lines would allow companies to respond more quickly to changes in the market. Written testimony and exhibits were submitted during the open comment period to support his conclusion that the market should be considered competitive.

3. No other testimony was offered at the hearing or provided during the open comment period (through November 24, 2014).

Conclusions

After reviewing the material and testimony presented at the hearing, I find that, while some indicators of competition have been improving in recent years, there continues to be substantial evidence in support of the conclusion that the medical malpractice insurance market for physicians, surgeons and hospitals is not a competitive market.

Therefore, it is ORDERED, that:

1. Pursuant to RSA 412:3 and RSA 412:13, a competitive market for medical malpractice insurance covering physicians, surgeons and hospitals does not exist in New Hampshire;

2. Rate filing procedures and standards outlined in RSA 412:15, 412:16 and 412:19, specific to a noncompetitive market, continue to apply; and

3. This Order will expire one year from the date this Order is signed.

NEW HAMPSHIRE INSURANCE DEPARTMENT

Alexander K Feldvebel

Dated: November 25, 2014 Alexander K. Feldvebel, Deputy Commissioner