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## COMMENTS FOR MEDICAL PROFESSIONAL LIABILITY HEARING ON MARKETPLACE COMPETITION

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This is the seventeenth hearing relative to the question of competition in the physician, surgeon, and hospital medical professional liability insurance market.

At prior hearings, a presentation such as this 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 professional liability 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 the last hearing, held on October 22, 2021, I presented updated information about the physician, surgeon and hospital market, and offered my perspective that there was little information in the updated data to suggest a different conclusion.

Following the hearing and after considering my comments, Commissioner Nicolopoulos, concluded that a competitive market for physician, surgeon and hospital medical professional liability does not exist in New Hampshire and issued order (Ins 21-056-AP), meaning that prior approval rate filing procedures and standards as outlined in RSA 412:16 would apply for a two year period, starting November 8, 2021.

Because that ruling expires as of November 7, 2023, it is time to make a new determination as to whether this market lacks a reasonable degree of competition. If you conclude that a competitive market for physician, surgeon, and hospital medical professional liability 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 recent statistics and (2) discussing any changes in the New Hampshire MPL market that have occurred which might cause you to now reach a different conclusion.**

**1. How has the marketplace changed with regard to regulated insurers and their portion of the written market?**

- a. Exhibit 1a shows a list of companies and their direct written premium amounts for medical professional liability insurance in calendar years 2021 and 2022.
  - i. Overall, the size of the market increased by 8.2%, from \$54.5 million to \$59.0 million. This increase was split just about evenly between the admitted market with a 9.4% increase in written premium and the non-admitted market increase by 7.2%. However, there appears to have been a shift from Surplus lines to the Risk Retention Groups. Also significant is that over the last 2 years the portion of the market written by regulated carriers is below 50%. Despite the slight increase from 2021, regulated entities had never written such a small portion of the MPL market in New Hampshire.
  - ii. ProSelect continued as the lead writer of medical professional liability insurance in New Hampshire with 20.7% of the total market in 2020. It is important to note that ProSelect wrote about 81% more premium than the next largest writer, TDC Specialty Insurance Company, a surplus lines writer, with 11.5%. This marks the first time I can recall a non-admitted carrier having the second largest portion of the market. That position had been held by Medical Mutual Insurance Company of Maine, which has seen a 43% decrease in written premium since 2020.
  - iii. On the rise among regulated carriers is ProAssurance Indemnity Company with 3.9% of the market. This is enough for third place

among admitted carriers. There is another ProAssurance company with greater market share but it operates as a surplus writer.

- iv. The Medical Protective Company is the fourth largest admitted writer in the market and the only other such carrier among the 10 overall. Med Pro continues to see a drop off in premium in New Hampshire, falling to 2.8% of the market, less than half what it had in 2018.
- v. Combined 2022 market share for the top 10 companies is 68.1%. The four regulated carriers among them wrote more than a third all New Hampshire business. There remains a substantial concentration of premium among a limited number of carriers.
- vi. The US Justice Department uses the Herfindahl-Hirschman Index (HHI) 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 a non-concentrated market.

The HHI for 2022 in New Hampshire is 786. For perspective, no other major line of business has an HHI greater than 470 (personal auto). However, if we consider regulated companies only in the calculation, the HHI is 2,707. This indicates the admitted market is highly concentrated.

- b. Exhibit 1-b shows more information about the largest regulated insurers writing medical professional liability in New Hampshire. Specifically, I have indicated whether companies are regional or national in scope and have shown the total amount of medical professional liability insurance each of them wrote in New Hampshire versus total New Hampshire premium. We also show medical professional liability premium and total premium written countrywide. Please note that with the exception of ProSelect and Medical Mutual of Maine, medical professional liability insurance writings in New Hampshire are quite insignificant to most insurers.
- c. Exhibit 1-c shows companies that have entered or exited the market since 2018. For the purposes of this exhibit, companies whose written premium has been dramatically reduced from 2018 levels (80% or more) are included in the category of insurers who have left the New Hampshire MPL market. Of note here is the arrival of Physicians Insurance RRG

which re-entered the state in 2022 with 2.4% of the New Hampshire market.

Among those carriers who have left the state since 2018 is Endurance America Specialty Insurance who once had 7.5% of the market.

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

- a. Exhibit 2-a is a comparison chart which shows current pricing for selected classifications of physicians among the four largest regulated insurers expected to write premium in 2024. 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 some less risky codes.
- b. Exhibit 2-b shows a rate history over a 15-year period. The pace of rate change activity slowed for several years but may be picking up again following ProSelect's second 5% increase in 4 years. Most rate revisions have been "across-the-board" changes and not focused on specific classes or categories of risk.
- c. In addition to their own data, many companies rely on each other's filings to justify their 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 market leaders use is appropriately reviewed by the regulator.

**3. How has the experience changed since the last hearing?**

- a. Exhibits 3a-3c are charts which show financial performance for the past 33 years, ending in 2022. This data comes from the National Association of Insurance Commissioners.
  - i. Exhibit 3a: New Hampshire experience in 2022 showed an estimated aggregate combined ratio of 128% which indicates the overall market experienced an underwriting loss. The 2022 pure loss ratio in New Hampshire was 77% which is materially higher than average. Loss adjustment expense (27% of earned premium)

and other expenses (23%) in 2022 are consistent with recent years. As is the case with all liability lines of business, MPL loss ratios can be quite volatile. Nevertheless, these numbers do support the observed rate increases we have seen recently and may indicate additional rate adjustments in the near future.

- ii. Exhibit 3b: Countrywide direct underwriting results showed the medical professional liability line to be moving towards unprofitability from an underwriting perspective as well. We do not have 2022 countrywide expense data yet from the NAIC so I have made a projection from what is available. With a 2022 estimated aggregate combined ratio of 106.9%, the countrywide market appears to be leveling off on the hard side of the market cycle. On a countrywide basis, the results are obviously much less volatile than a small state like New Hampshire. The projected 2022 loss ratio was 53.7%, which is down slightly from recent prior years.

It is important to remember that investment income is not considered when making this assessment of profitability. For long tail lines like MPL, this can provide a margin for overall profitability despite a triple digit combined ratio.

- 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. Nevertheless, it is difficult to ignore that Maine has fared better in recent years.
  - iv. Exhibit 3d is a table of underwriting results for New Hampshire over the last 33 years. This more clearly shows the detailed ebbs and flows of the loss experience over time.
- b. Exhibit 4 shows 2022 direct loss ratios for the leading writers in New Hampshire, Maine and Vermont. We can see quite clearly here the significant volatility within this line of business. The volatility within a company across states is also quite noticeable. The experience of Medical Mutual of Maine in each state has been particularly dramatic for example.
  - c. Countrywide medical professional liability insurance trends have an important influence on the New Hampshire market. For a perspective on

the countrywide market, I have reviewed publications from industry and the NAIC.

- i. Two years ago, I stated that COVID-19 would likely have a significant effect on the medical professional liability market. However, at that time I had no data to support that assertion or provide any guidance of what the significant effects might be. Now, the general consensus is net effects of the pandemic have been inconsequential on the MPL market countrywide. There was a drop off in doctor's visits generally during the height of the pandemic and there have not been a significant number of claims related to COVID treatment.
- ii. It is true the countrywide market is hardening with increased premium in most states and a tightening of underwriting decisions. The latter can explain the shift in New Hampshire market to surplus lines carriers. However, as seen in our state, the rate increases are not as dramatic as we saw in prior hard markets. Insurers appear to be revising reserve estimates and otherwise riding out this period of uncertainty.
- iii. One legacy of the pandemic is a continued use of telemedicine. It is still early to understand the effect of wide application of telemedicine on MPL claims activity.
- iv. Relative to other states, the MPL market in New Hampshire ranks in the middle with respect to estimate aggregate combined ratio, incurred loss ratio and insurer expenses.

## **Conclusion**

The conclusion I draw from all of this is there has not been a significant change to the market in the two years since the last hearing in any of the three categories that led to the prior declaration of a non-competitive market. It is my opinion that requiring companies to submit rate filings under a prior approval basis has not affected any company's ability to implement actuarially justified changes at the levels they wanted and when they wanted.

The continued migration of premium from the regulated market to surplus lines reduces the ability of regulators to monitor rate activity. Also, the regulated market continues to be dominated by a handful of companies which hinders a competitive environment.

There is clear evidence of a hardening market at the state and national level. The depth and length of the hard market is difficult to predict and may yet be influenced by COVID or other large-scale events not yet known.

With all this in mind, it seems reasonable to conclude, again, that the medical professional insurance market in New Hampshire has several attributes associated with a non-competitive market.

Thank you.