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COMMENTS FOR MEDICAL PROFESSIONAL LIABILITY HEARING ON MARKETPLACE COMPETITION

OCTOBER 31, 2019

This is the fifteenth hearing relative to the question of competition in the physician, surgeon and hospital medical professional liability 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 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 last year's hearing, held on October 29, 2018, 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.

Following the hearing and after considering my comments, the Hearing Officer, Deputy Commissioner Feldvebel, concluded that a competitive market for physician, surgeon and hospital medical professional liability does not exist in New Hampshire and issued order (Ins 18-047-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 5, 2018.

Because that ruling expires as of November 4, 2019, 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 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 current statistics and (2) discussing any changes in the NH 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 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 years 2017 and 2018. Note that:

        i. Overall, the size of the market increased by 12.7%, from $40.0 million to $45.0 million. This is after a decrease in 2017. The regulated market increased only 1.6% to $23.8 million. Surplus lines carriers increased by 21.0% and risk retention groups experienced the greatest increase in written premium at 50.7% due to the entrance of Controlled Risk Insurance Company of Vermont RRG in 2018. This new RRG wrote 5.3% of the market in its first year. At 52.7% of the market, the portion of the market written by licensed carriers is lowest it has been in many years.

        ii. ProSelect continued as the lead writer of medical professional liability insurance in New Hampshire with 23.5% of the total market in 2018. It is important to note that ProSelect wrote just about twice as much premium than the next largest writer in the New Hampshire market, which was Medical Mutual of Maine again. While ProSelect saw its written premium increase 10% year of year, Medical Mutual of Maine saw a decrease of 12% in the same period.

        iii. The Medical Protective Company, dropped another position from last year. Prior to 2017, MedPro had been the third largest writer for several years. Now sits at number 6 with 5.3% of the market with 3 non-admitted writers ahead of it. MedPro had essentially no change in written premium but the others grew significantly.

        iv. Combined 2018 market share for the top two companies is 35.4%. The top 10 companies wrote 74.2% of the business. Although these

statistics have decreased somewhat from prior years, there remains a substantial concentration in premium among a limited number of carriers.

v. 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 2018 is 944 versus 1,045 in 2017. However, if we consider regulated companies only in the calculation, the results yield an HHI of 2,665 for 2018 compared to 2,551 for 2017.

This large difference when limiting to the regulated market is due to the fact that only 4 of the top 10 writers are regulated. These four regulated insurers account for 43% of the overall market, but the same four writers combine for 82% of the regulated market.

b. Exhibit 1-b shows more information about the largest regulated insurers writing medical professional liability in New Hampshire. Specifically we 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 inconsequential to most insurers.

c. Exhibit 1-c shows companies that have entered or exited the market since 2010. For the purposes of this exhibit, companies whose market share has been dramatically reduced from 2010 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 ProAssurance Specialty Insurance Company which entered the market in 2015 and already claims more than 8% of the New Hampshire market. It is the third largest writer in the state. Among those writers who have left the market, of course, is the JUA. Also Lexington Insurance Company has completed its exit from the New Hampshire 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 2020. 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 11 year period. The pace of rate change activity slowed for several years but may be picking up again as MedPro followed Proselect's 5% rate increase this past spring. Most rate revisions implemented in the early part of this period had 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 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 29 years, ending in 2018. This data comes from the National Association of Insurance Commissioners.

i. Exhibit 3a: New Hampshire experience in 2018 showed an estimated aggregate combined ratio of 141% which indicates the market as a whole experienced an underwriting loss. The 2018 loss ratio in New Hampshire was 79% which is a return to the level seen in 2016 (72%) after an apparently anomalous 2017 figure of 118%. Loss adjustment expense and other expenses ratios were generally flat from prior year. As is the case with all liability lines of business, medical professional loss ratios can be quite volatile. Nevertheless, these numbers do support the observed rate increased 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 right at the edge of profitability for a second year now. With an estimated aggregate combined ratio of 100.5% the countrywide market appears to be stabilized. On a countrywide basis, the results are obviously much less volatile than a small state like New Hampshire. The 2018 CW loss ratio was 48% which has been consistent for three years.

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 the recent divergence of the New Hampshire results relative to Vermont and Maine.

iv. Exhibit 3d is a table of underwriting results for New Hampshire over the last 19 years. This more clearly shows the ebbs and flows of the loss experience over time.

b. Exhibit 4 shows 2018 direct loss ratios for the leading writers in New Hampshire, Maine and Vermont. Each of these markets experience similar aggregate loss ratios but you can see that New Hampshire had more consistent results across its largest writers. Maine and Vermont each demonstrate the large volatility of this line of business.

c. Countrywide medical professional liability insurance trends have an important influence on the NH market. For a perspective on the countrywide market I reached out to regulatory actuaries in other states for their observations and assessments of the health the market.

i. Generally speaking there seems to be a slow return to small positive rate changes after several years of almost no change.

ii. There continues to be consolidation of medical practices, which is associated with a shift in business away from the regulated market.

iii. One southern state is reporting a uptick in large settlements.

iv. It appears the New Hampshire market is more dependent on non-admitted carriers than other states.

Conclusion

The conclusion I draw from all of this is that, 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 affected any company's ability to implement actuarially justified changes at the levels they wanted and when they wanted.

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

Furthermore there appears to be a firming of the national market on the horizon along with continued political and hence structural uncertainly of the health care system.

With all this in mind, 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. Thank you.